

# ARKANSAS CODE OF 1987 ANNOTATED

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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 10

1998 Replacement

### TITLE 14: LOCAL GOVERNMENT (CHAPTERS 54-103)

*Prepared by the Editorial Staff of the Publisher*

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1998

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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 1997 Regular Session. Annotations are to the following sources:

Arkansas Advance Reports through 330 Ark. 497 and 59 Ark. App. 162.

Federal Supplement through Volume 974, p. 790.

Federal Reporter 3rd Series through Volume 124, p. 1482.

United States Supreme Court Reports, Lawyers' Edition, 2nd Series through Volume 138, p. 1034.

Bankruptcy Reporter through Volume 213, p. 49.

Arkansas Law Notes through the 1997 Edition.

Arkansas Law Review through Volume 49, p. 670.

University of Arkansas at Little Rock Law Journal through Volume 19, p. 540.

## **Titles of the Arkansas Code**

- |                                                                 |                                                 |
|-----------------------------------------------------------------|-------------------------------------------------|
| 1. General Provisions                                           | 15. Natural Resources and Economic Development  |
| 2. Agriculture                                                  | 16. Practice, Procedure, and Courts             |
| 3. Alcoholic Beverages                                          | 17. Professions, Occupations, and Businesses    |
| 4. Business and Commercial Law                                  | 18. Property                                    |
| 5. Criminal Offenses                                            | 19. Public Finance                              |
| 6. Education                                                    | 20. Public Health and Welfare                   |
| 7. Elections                                                    | 21. Public Officers and Employees               |
| 8. Environmental Law                                            | 22. Public Property                             |
| 9. Family Law                                                   | 23. Public Utilities and Regulated Industries   |
| 10. General Assembly                                            | 24. Retirement and Pensions                     |
| 11. Labor and Industrial Relations                              | 25. State Government                            |
| 12. Law Enforcement, Emergency Management, and Military Affairs | 26. Taxation                                    |
| 13. Libraries, Archives, and Cultural Resources                 | 27. Transportation                              |
| 14. Local Government                                            | 28. Wills, Estates, and Fiduciary Relationships |



## **User's Guide**

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.





# **TITLE 14**

## **LOCAL GOVERNMENT**

(CHAPTERS 1-53 IN VOLUME 9; CHAPTERS 104-182 IN  
VOLUME 11A; CHAPTERS 183-295 IN VOLUME 11B;  
CHAPTERS 296-387 IN VOLUME 12)

### *SUBTITLE 1. GENERAL PROVISIONS*

#### CHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. PUBLIC RECORDS GENERALLY.
- 3-12. [RESERVED.]

### *SUBTITLE 2. COUNTY GOVERNMENT*

#### CHAPTER.

13. GENERAL PROVISIONS. [RESERVED.]
14. COUNTY GOVERNMENT CODE.
15. OFFICERS.
16. POWERS OF COUNTIES GENERALLY.
17. COUNTY PLANNING.
18. PLATTED LANDS OUTSIDE MUNICIPALITIES.
19. COUNTY BUILDINGS.
20. QUORUM OR LEVYING COURTS.
21. COUNTY FUNDS.
22. COUNTY PURCHASING PROCEDURES.
23. CLAIMS AGAINST COUNTIES.
24. COUNTY WARRANTS.
25. COUNTY ACCOUNTING LAW.
26. WORKERS' COMPENSATION.
27. COUNTY INTERGOVERNMENTAL COOPERATION COUNCILS.
28. VOLUNTEER PUBLIC SAFETY WORKERS.
- 29-35. [RESERVED.]

### *SUBTITLE 3. MUNICIPAL GOVERNMENT*

#### CHAPTER.

36. GENERAL PROVISIONS [RESERVED.]
37. CLASSIFICATION OF CITIES AND TOWNS.
38. INCORPORATION AND ORGANIZATION OF MUNICIPALITIES.
39. SURRENDER OF CHARTER BY CITY OF THE SECOND CLASS OR INCORPORATED TOWN.
40. ANNEXATION, CONSOLIDATION, AND DETACHMENT BY MUNICIPALITIES.
41. ADDITIONS TO CITIES AND INCORPORATED TOWNS.
42. GOVERNMENT OF MUNICIPALITIES GENERALLY.
43. GOVERNMENT OF CITIES OF THE FIRST CLASS.
44. GOVERNMENT OF CITIES OF THE SECOND CLASS.
45. GOVERNMENT OF INCORPORATED TOWNS.
46. COMMISSION FORM OF MUNICIPAL GOVERNMENT. [REPEALED.]
47. CITY MANAGER FORM OF MUNICIPAL GOVERNMENT.

## CHAPTER.

- 48. CITY ADMINISTRATOR FORM OF MUNICIPAL GOVERNMENT.
- 49. CIVIL SERVICE FOR CITIES OF 75,000 OR OVER.
- 50. CIVIL SERVICE FOR CITIES OF 20,000 TO 75,000.
- 51. CIVIL SERVICE FOR POLICE AND FIRE DEPARTMENTS.
- 52. MUNICIPAL POLICE DEPARTMENTS.
- 53. MUNICIPAL FIRE DEPARTMENTS.
- 54. POWERS OF MUNICIPALITIES GENERALLY.
- 55. ORDINANCES OF MUNICIPALITIES.
- 56. MUNICIPAL BUILDING AND ZONING REGULATIONS—PLANNING.
- 57. REGULATION AND TAXATION OF VEHICLES BY MUNICIPALITIES.
- 58. FISCAL AFFAIRS OF CITIES AND INCORPORATED TOWNS.
- 59. MUNICIPAL ACCOUNTING LAW.
- 60. WORKERS' COMPENSATION.
- 61. CITY MANAGER ENABLING ACT OF 1989.
- 63-69. [RESERVED.]

*SUBTITLE 4. PUBLIC FINANCE GENERALLY*

## CHAPTER.

- 70. GENERAL PROVISIONS. [RESERVED.]
- 71. FISCAL YEARS.
- 72. BONDS OF COUNTIES, CITIES, AND TOWNS.
- 73. LOCAL GOVERNMENT RESERVE FUNDS.
- 74. TAXING AGENCIES — BORROWING AND BANKRUPTCY.
- 75. MANAGEMENT LETTER FOR AUDIT.
- 76. LOCAL GOVERNMENT LEASE AGREEMENTS AND PURCHASE CONTRACTS. [REPEALED.]
- 77. LOCAL FISCAL MANAGEMENT RESPONSIBILITY ACT.
- 78-85. [RESERVED.]

*SUBTITLE 5. IMPROVEMENT DISTRICTS GENERALLY*

## CHAPTER.

- 86. GENERAL PROVISIONS.
- 87. REORGANIZATION OR CONSOLIDATION OF IMPROVEMENT DISTRICTS.
- 88. MUNICIPAL IMPROVEMENT DISTRICTS GENERALLY.
- 89. FISCAL AFFAIRS OF MUNICIPAL IMPROVEMENT DISTRICTS.
- 90. ASSESSMENTS BY MUNICIPAL IMPROVEMENT DISTRICTS.
- 91. CONSTRUCTION, OPERATION, REPAIR, AND SALE OF MUNICIPAL IMPROVEMENTS.
- 92. SUBURBAN IMPROVEMENT DISTRICTS.
- 93. PROPERTY OWNERS' IMPROVEMENT DISTRICTS.
- 94. MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT LAW.
- 95. URBAN SERVICE DISTRICT.
- 96-103. [RESERVED.]

*SUBTITLE 6. WATER AND SOIL CONSERVATION GENERALLY*

## CHAPTER.

- 104-113. [RESERVED.]

*SUBTITLE 7. WATER AND SOIL IMPROVEMENT DISTRICTS*

## CHAPTER.

- 114. GENERAL PROVISIONS.
- 115. INTERSTATE WATERSHED COOPERATION ACT.
- 116. REGIONAL WATER DISTRIBUTION DISTRICT ACT.

## CHAPTER.

- 117. IRRIGATION, DRAINAGE, AND WATERSHED IMPROVEMENT DISTRICT ACT.
- 118. IMPROVEMENT DISTRICTS FOR RIVERS.
- 119. WATER IMPROVEMENT DISTRICT ACCOUNTING.
- 120. DRAINAGE AND LEVEE IMPROVEMENT DISTRICTS GENERALLY.
- 121. DRAINAGE IMPROVEMENT DISTRICTS GENERALLY.
- 122. MUNICIPAL DRAINAGE IMPROVEMENT DISTRICTS.
- 123. LEVEE IMPROVEMENT DISTRICTS GENERALLY.
- 124. ALTERNATIVE METHOD OF ASSESSMENT AND COLLECTION OF TAXES IN LEVEE IMPROVEMENT DISTRICTS OF MORE THAN ONE COUNTY.
- 125. CONSERVATION DISTRICTS LAW.
- 126-135. [RESERVED.]

*SUBTITLE 8. PUBLIC FACILITIES GENERALLY*

## CHAPTER.

- 136. GENERAL PROVISIONS. [RESERVED.]
- 137. PUBLIC FACILITIES BOARDS.
- 138. PUBLIC CORPORATIONS FOR MUNICIPAL FACILITIES.
- 139. MUNICIPAL EXHIBITION GROUNDS AND BUILDINGS.
- 140. PUBLIC MARKETPLACES IN CITIES AND TOWNS.
- 141. OPERATION OF MUNICIPAL AUDITORIUMS.
- 142. LOCAL GOVERNMENT LIBRARY BONDS.
- 143. REGIONAL INTERMODAL FACILITIES ACT.
- 144-151. [RESERVED.]

*SUBTITLE 9. PUBLIC FACILITIES IMPROVEMENT DISTRICTS*

## CHAPTER.

- 152-161. [RESERVED.]

*SUBTITLE 10. ECONOMIC DEVELOPMENT AND TOURISM GENERALLY*

## CHAPTER.

- 162. GENERAL PROVISIONS. [RESERVED.]
- 163. INDUSTRIAL COMMISSIONS.
- 164. INDUSTRIAL DEVELOPMENT BONDS.
- 165. INDUSTRIAL DEVELOPMENT COMPACTS.
- 166. PLANNING AND DEVELOPMENT ORGANIZATIONS.
- 167. ENERGY RESOURCES AND CONSERVATION.
- 168. COMMUNITY REDEVELOPMENT GENERALLY.
- 169. HOUSING AUTHORITIES AND URBAN RENEWAL AGENCIES.
- 170. TOURISM GENERALLY.
- 171. TOURIST FACILITIES.
- 172. HISTORIC DISTRICTS.
- 173. ECONOMIC DEVELOPMENT GRANTS.
- 174. ECONOMIC DEVELOPMENT TAX.
- 175-182. [RESERVED.]

*SUBTITLE 11. ECONOMIC DEVELOPMENT IMPROVEMENT DISTRICTS, FACILITIES, AND AUTHORITIES*

## CHAPTER.

- 183. GENERAL PROVISIONS. [RESERVED.]
- 184. CENTRAL BUSINESS IMPROVEMENT DISTRICTS.
- 185. METROPOLITAN PORT AUTHORITIES.
- 186. HARBORS AND PORT FACILITIES GENERALLY.

## CHAPTER.

- 187. MUNICIPAL WHARF IMPROVEMENT DISTRICTS.
- 188. RURAL DEVELOPMENT AUTHORITIES.
- 189-198. [RESERVED.]

*SUBTITLE 12. PUBLIC UTILITIES GENERALLY*

## CHAPTER.

- 199. GENERAL PROVISIONS.
- 200. MUNICIPAL AUTHORITY OVER UTILITIES.
- 201. MUNICIPAL BOARDS AND COMMISSIONS.
- 202. JOINT MUNICIPAL ELECTRIC POWER GENERATION.
- 203. MUNICIPAL ELECTRIC SYSTEM FINANCING.
- 204. MUNICIPAL AND COUNTY HYDROELECTRIC POWER DEVELOPMENT.
- 205. NATURAL GAS DISTRIBUTION SYSTEMS.
- 206. ACQUISITION OF UTILITIES BY MUNICIPALITIES.
- 207. VALUATION OF PROPERTIES AND FACILITIES UPON ANNEXATION.
- 208-215. [RESERVED.]

*SUBTITLE 13. PUBLIC UTILITY IMPROVEMENT DISTRICTS*

## CHAPTER.

- 216. GENERAL PROVISIONS.
- 217. GENERAL CONSOLIDATED PUBLIC UTILITY SYSTEM IMPROVEMENT DISTRICTS.
- 218. CONSOLIDATED WATER AND LIGHT IMPROVEMENT DISTRICTS.
- 219. LEASE OR SALE OF UTILITY PLANTS.
- 220-228. [RESERVED.]

*SUBTITLE 14. SOLID WASTE DISPOSAL, WATERWORKS, AND SEWERS GENERALLY*

## CHAPTER.

- 229. GENERAL PROVISIONS.
- 230. WATER, SEWER, AND SOLID WASTE MANAGEMENT FINANCING.
- 231. REFUNDING BONDS FOR SEWERS AND WATERWORKS. [REPEALED.]
- 232. REFUSE DISPOSAL GENERALLY.
- 233. JOINT COUNTY AND MUNICIPAL SOLID WASTE DISPOSAL.
- 234. WATERWORKS AND WATER SUPPLY.
- 235. MUNICIPAL SEWAGE SYSTEMS.
- 236. ARKANSAS SEWAGE DISPOSAL SYSTEMS ACT.
- 237. MUNICIPAL WATER AND SEWER DEPARTMENT ACCOUNTING LAW.
- 238. RURAL WATERWORKS FACILITIES BOARDS.
- 239-247. [RESERVED.]

*SUBTITLE 15. SOLID WASTE DISPOSAL, WATERWORKS, AND SEWER IMPROVEMENT DISTRICTS*

## CHAPTER.

- 248. GENERAL PROVISIONS. [RESERVED.]
- 249. SUBURBAN SEWER DISTRICTS.
- 250. WASTEWATER TREATMENT DISTRICTS.
- 251. WATER IMPROVEMENT DISTRICTS.
- 252-260. [RESERVED.]

*SUBTITLE 16. PUBLIC HEALTH AND WELFARE GENERALLY*

## CHAPTER.

- 261. GENERAL PROVISIONS. [RESERVED.]



## CHAPTER.

- 262. LOCAL HEALTH AUTHORITIES.
- 263. BOARD OF GOVERNORS FOR COUNTY HOSPITALS.
- 264. COMMISSIONS FOR MUNICIPAL HOSPITALS.
- 265. HEALTH CARE FACILITIES.
- 266. MUNICIPAL AMBULANCE LICENSING.
- 267. POLLUTION CONTROL FACILITIES.
- 268. FLOOD LOSS PREVENTION.
- 269. PARKS AND RECREATIONAL FACILITIES.
- 270. RURAL COMMUNITY PROJECTS.
- 271. UNDERGROUND FACILITIES DAMAGE PREVENTION.
- 272. RURAL FIRE DEPARTMENTS STUDY COMMISSION.
- 273-280. [RESERVED.]

*SUBTITLE 17. PUBLIC HEALTH AND WELFARE IMPROVEMENT DISTRICTS*

## CHAPTER.

- 281. GENERAL PROVISIONS. [RESERVED.]
- 282. AMBULANCE SERVICE IMPROVEMENT DISTRICTS.
- 283. MOSQUITO ABATEMENT DISTRICTS.
- 284. FIRE PROTECTION DISTRICTS.
- 285. MUNICIPAL RECREATION IMPROVEMENT DISTRICTS.
- 286. FIRE ANT ABATEMENT DISTRICTS.
- 287-295. [RESERVED.]

*SUBTITLE 18. ROADWAYS, BRIDGES, AND PARKING GENERALLY*

## CHAPTER.

- 296. GENERAL PROVISIONS.
- 297. COUNTY HIGHWAY COMMISSION. [REPEALED].
- 298. ESTABLISHMENT, ALTERATION, AND VACATION OF COUNTY ROADS.
- 299. MAINTENANCE AND REPAIR OF COUNTY HIGHWAYS.
- 300. COUNTY BRIDGES.
- 301. MUNICIPAL STREETS GENERALLY.
- 302. MUNICIPAL STREET AND PARKING REVENUE BOND ACT.
- 303. MUNICIPAL TOLLWAY AUTHORITY ACT.
- 304. PARKING AUTHORITIES.
- 305-314. [RESERVED.]

*SUBTITLE 19. ROADWAYS, BRIDGES, AND PARKING IMPROVEMENT DISTRICTS*

## CHAPTER.

- 315. GENERAL PROVISIONS. [RESERVED.]
- 316. ROAD IMPROVEMENT DISTRICTS GENERALLY.
- 317. RURAL ROAD IMPROVEMENT DISTRICTS.
- 318. IMPROVEMENT DISTRICTS FOR ACQUIRING RIGHTS-OF-WAY.
- 319. COUNTY BRIDGE IMPROVEMENT DISTRICTS.
- 320. INTERSTATE BRIDGE DISTRICTS.
- 321. VIADUCT IMPROVEMENT DISTRICTS.
- 322. IMPROVEMENT DISTRICTS FOR CITY STREETS.
- 323-332. [RESERVED.]

*SUBTITLE 20. PUBLIC TRANSIT SYSTEMS GENERALLY*

## CHAPTER.

- 333. GENERAL PROVISIONS.
- 334. PUBLIC TRANSIT SYSTEMS GENERALLY.



CHAPTER.

335. ELECTRIC AND STREET RAILROADS.

336-345. [RESERVED.]

*SUBTITLE 21. PUBLIC TRANSIT IMPROVEMENT DISTRICTS*

CHAPTER.

346-355. [RESERVED.]

*SUBTITLE 22. AIRPORT FACILITIES GENERALLY*

CHAPTER.

356. GENERAL PROVISIONS.

357. COUNTY AIRPORT COMMISSIONS.

358. COUNTY AIRPORTS.

359. MUNICIPAL AIRPORT COMMISSIONS.

360. MUNICIPAL AIRPORTS GENERALLY.

361. AIRPORTS IN BORDER MUNICIPALITIES.

362. REGIONAL AIRPORTS.

363. AIRPORT ZONING.

364. TAX ON AVIATION FUEL.

365-374. [RESERVED.]

*SUBTITLE 23. AIRPORT FACILITIES IMPROVEMENT DISTRICTS*

CHAPTER.

375-384. [RESERVED.]

*SUBTITLE 24. FENCING AND LIVESTOCK DISTRICTS*

CHAPTER.

385. GENERAL PROVISIONS. [RESERVED.]

386. FENCING DISTRICTS.

387. STOCK LAW DISTRICTS.

***SUBTITLE 3. MUNICIPAL GOVERNMENT***

**CHAPTER 54**

**POWERS OF MUNICIPALITIES GENERALLY**

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. INTERSTATE AGREEMENTS.

3. REAL AND PERSONAL PROPERTY.

4. PUBLIC PROPERTY FOR PROCESSING CRUDE BIOGENIC GASES.

5. AREAS ADJACENT TO SHOPPING CENTERS.

6. PUBLIC IMPROVEMENTS.

7. PUBLIC UTILITIES.

8. PUBLIC HEALTH.

9. REGULATION OF UNSANITARY CONDITIONS.

10. PLUMBERS AND PLUMBING REGULATIONS. [REPEALED.]

11. REGULATION OF ANIMALS.

12. MILK PRODUCTION AND SALE.

13. PUBLIC RECREATION AND PLAYGROUNDS.

14. MISCELLANEOUS REGULATIONS.

## RESEARCH REFERENCES

**Am. Jur.** 28 Am. Jur. 2d, Est. & Waiv., § 128.

56 Am. Jur. 2d, Mun. Corp. & Coun., §§ 98 et seq., 193-230, 433-578, 680 et seq.

57 Am. Jur. 2d, Mun. & Coun. Tort., § 5 et seq.

56 Am. Jur. 2d, Mun. Corp., §§ 193-230, 423-578.

**C.J.S.** 62 C.J.S., Mun. Corp., § 106-313.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

14-54-101. Body corporate and politic.

14-54-102. Powers and restrictions prescribed.

14-54-103. General powers of cities and towns.

14-54-104. Additional powers of cities of the first class.

## SECTION.

14-54-105. Additional powers of cities of the second class.

14-54-106. Cities and towns on state line.

14-54-107. Aid to new industries.

14-54-108. Federal assistance.

**Publisher's Notes.** Acts 1875, No. 1, § 31, preserved the rights, liabilities and property of municipal corporations organized prior to adoption of the act.

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1883, No. 63, § 3: effective on passage.

Acts 1885, No. 67, § 7: effective on passage.

Acts 1897 (Ex. Sess.), No. 24, § 4: effective on passage.

Acts 1901, No. 173, § 2: effective on passage.

Acts 1931, No. 1, § 4: Jan. 26, 1931. Emergency clause provided: "The General Assembly finds that an opportunity exists at the present time for securing substantial expenditures for the purposes stated in section 1 hereof; that such opportunities may be lost unless the necessary lands can be at once acquired; that such expenditures are much needed during the present unemployment crisis, and that it is necessary for the preservation of the public peace, health and safety that this act become effective without delay. An emergency is therefore declared and this act shall take effect and be in force from and after its passage and approval."

Acts 1939, No. 68, § 10: Feb. 10, 1939. Emergency clause provided: "Because the act creating the present Agricultural and Industrial Commission expires on March

25, 1939; and after that time there will be no other Commission to carry into effect the provisions of the Tax Exemption Amendment; and such a Commission being required; and, because competitive bidding for new industrial investments among our neighboring states is now intense, and Arkansas should take full advantage of every opportunity; and, it being immediately necessary for the preservation of the public peace, health and safety; an emergency is hereby declared to exist, and this act shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 23, § 3: Jan. 28, 1949. Emergency clause provided: "Whereas, it is necessary that cities and towns be granted additional powers to protect the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 268, § 5: Mar. 12, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the cities and towns of this State are in desperate need of assistance to perform useful public services; that the United States Government has available various forms of financial assistance to enable cities and towns to provide various forms of public services; and that the immediate passage of this Act is necessary

to authorize cities and towns to apply for and accept assistance or gifts in the form of funds from the United States of America and to enter into contracts necessary in connection with such financial assistance or gifts. Therefore, an emergency is

hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

**ALR.** Validity, construction, and effect of state and local laws requiring governmental units to give "purchase preference"

to goods manufactured or services performed in state. 84 ALR 4th 419.

14-54-101. Body corporate and politic.

Cities or incorporated towns organized under the provisions of this subtitle are declared to be bodies politic and corporate, under the name and style of "The city of . . . . . " or "The incorporated town of . . . . . , " as the case may be, capable to:

- (1) Sue and be sued;
- (2) Contract and be contracted with;
- (3) Acquire, hold, and possess real and personal property;
- (4) Associate with other municipalities for the promotion of their general welfare;
- (5) Join with other municipalities in the purchase of equipment, supplies, or services;
- (6) Have a common seal and change and alter it at pleasure; and
- (7) Exercise such other powers and have such other privileges as are incident to other corporations of like character or degree, not inconsistent with the provisions of this subtitle or the general laws of this state.

**History.** Acts 1875, No. 1, § 10, p. 1; C. & M. Dig., § 7490; Pope's Dig., § 9533; Acts 1949, No. 23, § 1; A.S.A. 1947, § 19-2301.

**Cross References.** Tort liability immunity, § 21-9-301.

RESEARCH REFERENCES

**Ark. L. Rev.** Expansion of Municipal Corporation Tort Liability — A Legislative Responsibility, 14 Ark. L. Rev. 313.

CASE NOTES

ANALYSIS	In General.
In general.	A municipal corporation has no powers except those expressly conferred and those fairly implied for the attainment of declared purposes. Bain v. Fort Smith Light & Traction Co., 116 Ark. 125, 172 S.W. 843 (1915); Willis v. City of Ft. Smith,
Purpose.	
Acquire, etc., property.	
Contracts.	
Suits.	

121 Ark. 606, 182 S.W. 275 (1916); *City of Argenta v. Keath*, 130 Ark. 334, 197 S.W. 686 (1917).

#### **Purpose.**

This section permits municipalities to associate for the promotion of their general welfare and to join together in the purchase of services, such as legal services. *O'Brien v. City of Greers Ferry*, 873 F.2d 1115 (8th Cir. 1989).

#### **Acquire, Etc., Property.**

Municipalities have power to dispose of property held for convenience or profit. *Town of Searcy v. Yarnell*, 47 Ark. 269, 1 S.W. 319 (1886).

Municipalities may acquire land within municipal limits for a public cemetery. *City of Ft. Smith v. Wilson*, 100 Ark. 587, 140 S.W. 733 (1911).

Municipal corporations have authority

to sell property that no longer can be used to advantage or with economy. *Fussell-Graham-Alderson Co. v. Forrest City*, 145 Ark. 375, 224 S.W. 745 (1920).

#### **Contracts.**

Municipalities have the power to enter into contracts. *Harrison v. Boone County*, 238 Ark. 113, 378 S.W.2d 665 (1964).

#### **Suits.**

There is no greater impediment in asserting statutory liability on a municipality than in asserting contractual liability. *Deason v. Rogers*, 247 Ark. 1061, 449 S.W.2d 410 (1970).

Municipal funds can be used to pay attorney's fees for public officials and employees who are not charged with a criminal offense, and who are sued in their official capacity. *O'Brien v. City of Greers Ferry*, 873 F.2d 1115 (8th Cir. 1989).

### **14-54-102. Powers and restrictions prescribed.**

All municipal corporations organized under the provisions of this subtitle shall have general powers and privileges and be subject to the rules and restrictions prescribed in this subtitle.

**History.** Acts 1875, No. 1, § 11, p. 1; C. & M. Dig., § 7491; Pope's Dig., § 9534; A.S.A. 1947, § 19-2302.

### **CASE NOTES**

#### **Commissions.**

The Arkansas General Assembly has deemed cities in Arkansas to be bodies politic and corporate which are capable of suing and being sued; no such express power to sue had been vested in the City of Hot Springs Advertising and Promotion Commission by the general assembly at the time it filed its lawsuit. *City of Hot Springs Adv. & Promotion Comm'n v. Cole*, 317 Ark. 269, 878 S.W.2d 371 (1994).

The mere power to administer the advertising and promotion fund did not imbue the City of Hot Springs Advertising and Promotion Commission with the power to sue to collect hotel and restaurant taxes, especially when the general assembly had not expressly invested the City of Hot Springs with that authority at the time the complaint was filed. *City of Hot Springs Adv. & Promotion Comm'n v. Cole*, 317 Ark. 269, 878 S.W.2d 371 (1994).

### **14-54-103. General powers of cities and towns.**

Cities and incorporated towns shall have power to:

(1) Prevent injury or annoyance within the limits of the municipal corporation from anything dangerous, offensive, or unhealthy and cause any nuisance to be abated within the jurisdiction given the board of health in § 14-262-102;



(2) Regulate the keeping and transportation of gunpowder, dynamite, and other combustibles and provide or license magazines for them;

(3) Prevent and punish fast or immoderate riding of horses or driving or propelling of vehicles through the streets;

(4) Establish and regulate markets;

(5) Provide for the measuring or weighing of hay, wood, or any other article for sale;

(6) Regulate the transportation of articles throughout the streets and prevent injury to the streets from overloaded vehicles;

(7) Prevent cruelty to animals;

(8) Prevent any riots, noise, disturbance, or disorderly assemblages;

(9)(A) Regulate drumming or soliciting persons who arrive on trains or otherwise for hotels, boardinghouses, bathhouses, or doctors, to license these drummers, provide that each shall wear a badge plainly exposed to view, showing for whom and for what he is drumming or soliciting patronage, and punish by fines any violation of this subdivision.

(B) Any bona fide owner or proprietor of any hotel or boardinghouse may solicit patronage to his hotel or boardinghouse without being required to wear a badge or pay license therefor;

(10) License, regulate, tax, or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, sparring exhibitions, dance houses, fortune tellers, pistol galleries, corn doctors, private-lock venereal hospitals, museums and menageries, equestrian performances, horoscopic views, lung testers, muscle developers, magnifying glasses, billiard tables or other instruments used for gaming, theatricals, or other exhibitions, shows, and amusements, or any gift enterprise;

(11) Suppress prizefighting, dogfights, chicken fights, gaming, or gambling houses; and

(12) Regulate or suppress bawdy or disorderly houses, houses of ill-fame, or houses of assignation.

**History.** Acts 1875, No. 1, § 12, p. 1; § 1, p. 326; C. & M. Dig., § 7529; Pope's 1883, No. 63, § 1, p. 97; 1901, No. 173, Dig., § 9589; A.S.A. 1947, § 19-2303.

## RESEARCH REFERENCES

**Ark. L. Rev.** Nuisance — Rock Festivals and Nuisance, 25 Ark. L. Rev. 362.  
 Nickles and Adams, Pawnbrokers, Po- lice, and Property Rights — A Proposed Constitutional Balance, 47 Ark. L. Rev. 793.

## CASE NOTES

### ANALYSIS

In general.  
 Bawdy or disorderly houses.  
 Combustibles.  
 "Dangerous, offensive, or unhealthy."

Drumming or soliciting.  
 Gaming.  
 Hotels.  
 "License, regulate, tax," etc.  
 Measuring or weighing.



Nuisances.

Riots, noise, etc.

Transportation over streets.

### **In General.**

Where violation of ordinance depended on whether two or more neighbors had filed a written petition, it was in conflict with Ark. Const., Art. 2, § 18. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

### **Bawdy or Disorderly Houses.**

Municipalities have no right to make the mere presence, abode, or return to the municipality of a prostitute a misdemeanor. *Buell v. State*, 45 Ark. 336 (1885); *Paralee v. State*, 49 Ark. 165, 4 S.W. 654 (1887).

### **Combustibles.**

Prohibition against erecting and operating filling stations without permission is a regulation within municipality's police power. *Van Hovenberg v. Holman*, 201 Ark. 370, 144 S.W.2d 718 (1940).

Municipality has power to regulate, but not to prohibit, blasting in stone quarries within the municipality. *Hackler v. City of Ft. Smith*, 238 Ark. 29, 377 S.W.2d 875 (1964).

### **"Dangerous, Offensive, or Unhealthy."**

Municipalities may prohibit appearance of drunken persons on streets. *Ex parte Foote*, 70 Ark. 12, 65 S.W. 706 (1901); *Dewitt v. La Cotts*, 76 Ark. 250, 88 S.W. 877 (1905); *Brooke v. State*, 86 Ark. 364, 111 S.W. 471 (1908).

Municipalities cannot require illegal actions under the guise of protecting the public health. *Dreyfus v. Boone*, 88 Ark. 353, 114 S.W. 718 (1908).

Butchers may be required to take out a license and have their meats inspected. *Trigg v. Dixon*, 96 Ark. 199, 131 S.W. 695 (1910).

Municipality has power to pass ordinance prohibiting the hanging of signs within designated area. *Berkau v. City of Little Rock*, 174 Ark. 1145, 298 S.W. 514 (1927).

Municipality has the power to provide, by proper ordinance, for the removal, at suitable intervals, of garbage, waste, trash, and refuse. *Geurin v. City of Little Rock*, 203 Ark. 103, 155 S.W.2d 719 (1941).

Ordinance providing for collection of garbage, waste, trash, and refuse and for inspection of premises and providing penalty for violation thereof was held not void for imprisonment for debt, since punishment was for violation of law. *Geurin v. City of Little Rock*, 203 Ark. 103, 155 S.W.2d 719 (1941).

State's power to legislate in the protection of public health has been granted and delegated to municipalities. *City of Little Rock v. Smith*, 204 Ark. 692, 163 S.W.2d 705 (1942).

Ordinance providing that whenever a person who, upon examination was found to be infected with a venereal disease in a communicable stage, failed to take treatment adequate for the protection of the public health, city health officer could commit that person to a hospital or other place within the state for treatment was held not unconstitutional on ground the regulations were unreasonable. *City of Little Rock v. Smith*, 204 Ark. 692, 163 S.W.2d 705 (1942).

Municipality has been given power to perform service of fogging the municipality with insecticide by implication under the provision of this section. *Holman v. City of Dierks*, 217 Ark. 677, 233 S.W.2d 392 (1950).

### **Drumming or Soliciting.**

Ordinances within the terms of this section as to the regulation of drummers are presumed to be reasonable, and the courts will not interfere on the grounds of unreasonableness. *City of Fayetteville v. Carter*, 52 Ark. 301, 12 S.W. 573 (1889); *City of Hot Springs v. Curry*, 64 Ark. 152, 41 S.W. 55 (1897).

"Uninvited callers" ordinance bore no reasonable relation to requirements essential to exercise of municipality's police powers and was void as to solicitors, within city, of orders for portrait photographic work. *Wilkins v. Harrison*, 218 Ark. 316, 236 S.W.2d 82 (1951).

### **Gaming.**

Municipal ordinance licensing exhibiting of a gaming table or gambling device is void. *State v. Lindsay*, 34 Ark. 372 (1879).

Municipalities have power to suppress gambling devices, and none to regulate them. *Goetler v. State*, 45 Ark. 454 (1885).

### **Hotels.**

Municipal corporations are not authorized to regulate hotels. *Bragg v. Adams*, 180 Ark. 582, 21 S.W.2d 950 (1929).

**"License, Regulate, Tax," Etc.**

A dealer in real estate for others is a broker and, under this section, may be required to pay a license for following the occupation within the limits of a municipality. *Little Rock v. Barton*, 33 Ark. 436 (1878); *City of Hot Springs v. Rector*, 71 Ark. 463, 76 S.W. 1056 (1903).

A peddler is one who goes from house to house exposing for sale the goods that he carries. *Conway v. Waddell*, 90 Ark. 127, 118 S.W. 398 (1909).

The business of operating moving picture shows is a lawful business, and it may not be suppressed or unreasonably burdened by license fees and taxes that are unreasonably high or discriminatory. *City of Morrilton v. Malco Theatres, Inc.*, 202 Ark. 100, 149 S.W.2d 55 (1941).

Power of municipal council extends only to the right to regulate reasonably, and it does not include the power to prohibit anyone from operating more than one picture show. *City of Morrilton v. Malco Theatres, Inc.*, 202 Ark. 100, 149 S.W.2d 55 (1941).

If owner of amusement machines pays to city amount specified by statute, city cannot levy an additional tax on the use of the machines, as city cannot levy a tax higher than amount specified in statute. *City of Springdale v. Gage*, 214 Ark. 356, 216 S.W.2d 390 (1949).

**Measuring or Weighing.**

Municipality could enforce ordinance providing for measuring or weighing hay, wood, or other articles for sale within its limits, unless the ordinance was unreasonable in its requirements or was enacted for raising of revenue. *Taylor, Cleveland & Co. v. Pine Bluff*, 34 Ark. 603 (1879); *Wills v. City of Ft. Smith*, 70 Ark. 221, 66 S.W. 922 (1902) (decisions prior to § 14-54-103 et seq.)

**Nuisances.**

Municipal council is not authorized to condemn any action or thing as a nuisance that in its nature, situation, or use, does not come within the legal notion of a nuisance. *Ward v. Little Rock*, 41 Ark. 526 (1883); *Merrill v. Van Buren*, 125 Ark. 248, 188 S.W. 537 (1916).

Whether a community shall be invaded by construction and operation of a filling station is a matter which may be regulated, even though the station, per se, is

not a nuisance. *Van Hovenberg v. Holman*, 201 Ark. 370, 144 S.W.2d 718 (1940).

Municipality cannot declare that to be a nuisance which is not such in fact. *Wilkins v. Harrison*, 218 Ark. 316, 236 S.W.2d 82 (1951); *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

Municipality may regulate keeping of chickens, but such regulation must not be arbitrary or unjust. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

Municipality may regulate location of livery stables, but such regulation must not be arbitrary or unjust. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

Municipality has no right to declare the keeping of bees in municipal limits a nuisance. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

Keeping of cattle in a municipality is not a nuisance per se. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

The hide or fur business in a municipality is not a nuisance per se. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

A livery stable in a municipality is not a nuisance per se. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

**Riots, Noise, Etc.**

Ordinance requiring places of business in town to remain closed from midnight to four a.m. whose purpose was to prevent youths from driving noisily about the streets during this period was in excess of town's delegated authority relative to enactment of ordinances, since this purpose could have been accomplished by directly prohibiting the objectionable conduct. *Dyess v. Williams*, 247 Ark. 155, 444 S.W.2d 701 (1969).

**Transportation over Streets.**

Board of commissioners of an improvement district have no control over a municipal street except for the purpose of making an improvement. *Pulaski Gaslight Co. v. Rummel*, 97 Ark. 318, 133 S.W. 1117 (1911).

Municipalities have power to pass ordinances regulating the use of streets by trucks. *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955).

Statutory provisions relating to motor vehicles did not repeal or supersede this section or affect the authority of municipalities to regulate the use of streets by trucks. *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Arkansas County v. Burris*, 308 Ark. 490, 825 S.W.2d 590 (1992).

#### **14-54-104. Additional powers of cities of the first class.**

In order to better provide for the public welfare, safety, comfort, and convenience of inhabitants of cities of the first class, the following enlarged and additional powers are conferred upon these cities:

(1)(A)(i) To regulate the use of sidewalks, and all structures and excavations thereunder, to require the owner or occupant of any premises to keep the sidewalks in front or alongside the premises free from obstruction, to build and maintain suitable pavement or sidewalk improvements therealong whenever they may become necessary to the safety or convenience of travel, and to designate the kind of sidewalk improvement to be made, the kind of material to be used by the owner or occupant, and the time within which the improvement is required to be completed.

(ii) The kind and character of sidewalk improvement for the same street and block shall be uniform.

(B)(i)(a) Sidewalk improvement shall be ordered, either by a general ordinance for all property owners or occupants on a certain street or within a certain quarter where the necessity of sidewalks is general to that extent, or by a resolution or order adopted by the city council and notice served upon the particular individuals owning or occupying the premises where the special necessity exists.

(b)(1) In either case, the city shall have power to enforce obedience to the sidewalk ordinance, order, resolution, or notice upon the owners or occupants failing or refusing to obey them by the imposition of fines upon conviction thereof in the police court, in like manner and with like consequences and effect as for a violation of any other ordinance of the city.

(2) Each day that the failure or refusal is continued shall constitute a separate offense.

(ii) After the owner, upon notice, has failed to repair it, in cases where the sidewalk improvement shall be constructed by an occupant who holds the premises as a tenant or lessee, he shall have the right to deduct the cost thereof from the rent that may be due from him, or to hold the possession of the premises for such time as the rental value thereof will be sufficient to reimburse him for the cost.

(iii) Nothing contained in this subdivision shall be so construed as to prevent the city from proceeding by civil action or in any other manner provided by existing laws.

(2) To alter or change the width or extent of streets, sidewalks, alleys, avenues, parks, wharves, and other public grounds, and to vacate or lease out such portions thereof as may not for the time being be required for corporate purposes, and where lands have been acquired



or donated to the city for any object or purpose which has become impossible or impracticable to achieve, the lands may be used or devoted for other proper public or corporate purposes or sold by order of the city council and the proceeds applied for public or corporate purposes.

(3)(A) To punish, prevent, or remove encroachments or obstructions upon any of the streets, sidewalks, wharves, or other public grounds of the city, whether by buildings, fences, or structures of any kind, posts, trees, or any other matter or thing whatsoever.

(B) No statute of limitations or lapse of time during which any obstruction or encroachment may have existed or been continued shall be permitted as a bar or defense against any proceeding or action to remove or abate it or to punish for its continuance after an order has been made by the city council or the police court for its removal or abatement.

(4)(A) To prevent and punish the bringing or importation into the city of any pauper, mendicant, diseased, or other person likely to become a burden on the city or any charity therein or become a charge upon the county in which the city is situated unless such action has been authorized by some competent officer in this state in a manner provided for by law.

(B) To punish the conductor of any railroad, captain of any boat or vessel, proprietor or driver of any stage or other conveyance bringing any such person into the city unless the party providing conveyance can show that he had no reasonable grounds to know or become apprised of the condition or circumstances of such person;

(C) To prevent or regulate the carrying on of any trade, business, or vocation of a tendency dangerous to morals, health, or safety, or calculated to promote dishonesty or crime. To provide by ordinance for the punishment of dishonest practices of any kind, and for the prompt arrest and punishment of all dishonest characters or persons of known bad reputation, such as burglars, pickpockets, sneakthieves, forgers, fakirs, confidence men, common cheats, tricksters, and the like, who shall come into or be found within the corporate limits of the city without being able to give a good account of themselves, and to provide that, upon the trial of all such persons, evidence as to general character, reputation, associates, and places frequented shall be admissible, and in all such cases to authorize a fine of not exceeding one hundred dollars (\$100); and

(D) To prevent, abate, or remove nuisances of every kind, and to declare what are nuisances, and also to punish the authors or continuers thereof by fine or imprisonment, or both. However, no previous declaration shall be necessary as to any matter, act, or thing that would have been a nuisance at common law, and all nuisances may be proceeded against either by order of the city council or prosecution in the police court.

**History.** Acts 1885, No. 67, § 3, p. 92; C. & M. Dig., § 7748; Pope's Dig., § 9944; A.S.A. 1947, § 19-2304.

**Cross References.** Municipal streets generally, § 14-301-101 et seq.

## CASE NOTES

### ANALYSIS

In general.

Nuisances.

Sidewalks.

Streets, alleys, etc.

Trades, businesses, or vocations.

### In General.

An ordinance under this section must not be oppressive to a property owner. *James v. City of Pine Bluff*, 49 Ark. 199, 4 S.W. 760 (1887).

Cities of the first class are authorized to regulate the use of streets and sidewalks within their limits. *State ex. rel. Latta v. City of Marianna*, 183 Ark. 927, 39 S.W.2d 301 (1931).

### Nuisances.

City cannot declare that to be a nuisance which is not a nuisance per se. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

City has no right to declare keeping of bees in the city a nuisance. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

The keeping of cattle, a livery stable, or the hide and fur business in a city are not nuisances per se. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

City may regulate location of livery stables, but such regulation must not be arbitrary or unjust. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

City may regulate keeping of chickens, but such regulation must not be arbitrary or unjust. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

### Sidewalks.

Regulation of use of sidewalks is valid delegation of police power and is not unconstitutional. *James v. City of Pine Bluff*, 49 Ark. 199, 4 S.W. 760 (1887).

Owner can be required only to do surface grading in building sidewalks. *City of Little Rock v. Fitzgerald*, 59 Ark. 494, 28 S.W. 32 (1894).

Cities may require removal of wooden

awnings from above sidewalks. *City of Helena v. Wooten*, 98 Ark. 156, 135 S.W. 828 (1911).

### Streets, Alleys, Etc.

City has no power to sell, exchange, or give away streets. *Beebe v. City of Little Rock*, 68 Ark. 39, 56 S.W. 791 (1900).

Title to an alley cannot be acquired by limitations. *Kansas City S. Ry. v. Boles*, 88 Ark. 533, 115 S.W. 375 (1908).

Where improvement district in city was organized for purpose of improving a street, the board of commissioners acquired no control over the street except for the purpose of making the improvement, and when that object was accomplished, the street became subject to the exclusive control of the city. *Pulaski Gaslight Co. v. Rimmel*, 97 Ark. 318, 133 S.W. 1117 (1911).

City is without power to organize an improvement district in a city for the purpose of opening, establishing, and creating an alley through property when no alley has ever been opened, dedicated, or provided for. *Lewis v. Rieff*, 114 Ark. 366, 169 S.W. 1184 (1914).

Subdivision (2) was not repealed by § 14-301-301 et seq. providing a method for the vacation of streets and alleys. *Cernauskas v. Fletcher*, 211 Ark. 678, 201 S.W.2d 999 (1947); *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

City cannot bind itself by perpetual contract or by one that lasts an unreasonable time, and any attempt on the part of the city to enter into a contract relating to the permanent establishment or abandonment of its streets would be ultra vires. *Risser v. City of Little Rock*, 225 Ark. 318, 281 S.W.2d 949 (1955), cert. denied, 350 U.S. 965, 76 S. Ct. 439, 100 L. Ed. 838 (1956).

Where only issue in prior suit to enjoin city from enforcing ordinance adopted under the authority of § 14-301-301 purporting to close certain streets was the validity of the ordinance, authority of city to adopt ordinance under this section relocating portions of the streets was not res judicata.

in proceedings to enjoin enforcement of second ordinance. *Risser v. City of Little Rock*, 225 Ark. 318, 281 S.W.2d 949 (1955), cert. denied, 350 U.S. 965, 76 S. Ct. 439, 100 L. Ed. 838 (1956).

When public had only an easement in city streets that were vacated when railroad constructed a terminal so that the railroad could build its tracks, train sheds, and platforms across the streets, and thereafter rail service into the city was discontinued and the terminal facilities were used for other purposes, city, by such discontinuance, acquired no right to reopen the streets except under their power of eminent domain. *Kansas City S. Ry. v. City of Ft. Smith*, 228 Ark. 625, 309 S.W.2d 315 (1958).

Section 14-301-301 et seq. did not repeal this section, and the failure of parties to secure the closing of an alley under the procedure set out in § 14-301-301 et seq., which required the consent of the abutting property owners, would not be res judicata of any future litigation between the same parties instigated under this section, the procedure in this section involving the closing of an alley in order to better provide for the public welfare of the inhabitants of a city. *Roberts v. Pace*, 230 Ark. 280, 322 S.W.2d 75 (1959).

In litigation involving closing of an alley where the procedure was instituted under § 14-301-303, which necessitated the written consent of the owners of all abutting lots, while the written consent of those owners actually abutting the two ends of the alley had been obtained, from the practical standpoint upon both ends of the alley being closed, the entire alley would become closed and therefore, all abutting property owners not having given their consent, the petitioners had to fail. *Roberts v. Pace*, 230 Ark. 280, 322 S.W.2d 75 (1959).

Since this section contains no provision limiting to 30 days any attack on a city ordinance, and thus ordinary statutory period for suits against enforcement of an ordinance would apply, plenary suit filed 31 days after passage of ordinance that provided for closing of a street to enjoin enforcement of the ordinance was timely filed. *Stephens v. City of Springdale*, 233 Ark. 865, 350 S.W.2d 182 (1961).

City does not have right to vacate and close portion of a street where there is no showing that portion to be closed is not

being used by the public as a street. *Brooksher v. Jones*, 238 Ark. 1005, 386 S.W.2d 253 (1965).

On request of person who desired sections of streets and alley, abutting which he owned all the land, vacated to enable him to construct additional facilities, city had power to vacate the sections of streets and alley on evidence that their closing would cause but little inconvenience to persons then using them and their traffic could be readily carried by other nearby streets and alleys. *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968).

Ordinance vacating an easement therefore accepted by public use and passed without notice to the affected property owners could not deprive an abutting property owner who relied on such easement for access to and egress from his property of his right to use such easement. *Flake v. Thompson, Inc.*, 249 Ark. 713, 460 S.W.2d 789 (1970).

Where city found that traffic on a portion of a street had declined and that closing of this portion of the street would not work a hardship on many people, and where owners of abutting property consented to closing of the street, an ordinance vacating and abandoning the street was not ultra vires. *Freeze v. Jones*, 260 Ark. 193, 539 S.W.2d 425 (1976).

Where nonabutting owners could not show special and peculiar injury suffered in connection with the closing of a street in which the city had only an easement, the nonabutting owners did not have standing to challenge ordinance vacating and abandoning the street. *Freeze v. Jones*, 260 Ark. 193, 539 S.W.2d 425 (1976).

Where street right-of-way had been dedicated by filing of a plat and the easement had been accepted by the city, the ownership of the fee in the right-of-way remained in the abutting owners, so that when the city vacated the street it could not be sold by the city nor devoted to another public use. *Freeze v. Jones*, 260 Ark. 193, 539 S.W.2d 425 (1976).

Where company in developing subdivision incurred great expense in reliance upon its continued access to street, and since the developer's right of ingress and egress is a property right that cannot be taken away by a city, at least without payment of just compensation, city's action in vacating street that permitted in-



gress and egress to the development was arbitrary and invalid. *City of Sherwood v. Dupree Co.*, 263 Ark. 442, 565 S.W.2d 425 (1978).

Decision concerning the validity of one ordinance under § 14-301-301 et seq., regarding the closing of an alley was not res judicata with respect to the validity of this second ordinance enacted pursuant to this section. *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

### **Trades, Businesses, or Vocations.**

Ordinance requiring butchers to take out a license and requiring their meats to be inspected is a valid exercise of regulatory power. *Trigg v. Dixon*, 96 Ark. 199, 131 S.W. 695 (1910).

Ordinances regulating sale of milk and fresh meats are a valid exercise of police power. *Carpenter v. City of Little Rock*, 101 Ark. 238, 142 S.W. 162 (1911).

Sale of cider either by wholesale or retail is a proper subject of municipal regulation. *City of Texarkana v. Hudgins Produce Co.*, 112 Ark. 17, 164 S.W. 736 (1914).

There is no limitation on power of city to prohibit, by ordinance, the maintenance of gasoline filling stations, gasoline pumps, oil tanks, service appliances, etc., on the streets of the city within the fire limits. *Sander v. City of Blytheville*, 164 Ark. 434, 262 S.W. 23 (1924).

Cities of the first class have regulatory powers over hotels. *City of Texarkana v. Brachfield*, 207 Ark. 774, 183 S.W.2d 304 (1944).

Ordinance enacted by city under public welfare clause is presumed to be legal and reasonable. *Goldman & Co. v. City of N. Little Rock*, 220 Ark. 792, 249 S.W.2d 961 (1952).

City has power to prohibit operation of junkyard and storing of waste paper within a fire district. *Goldman & Co. v. City of N. Little Rock*, 220 Ark. 792, 249 S.W.2d 961 (1952).

City has power and authority to enact an ordinance providing no license to operate a rooming house or hotel shall be granted unless it shall appear probable that applicant will not rent rooms for immoral purposes or allow prostitutes or pimps to remain on the premises or permit gambling or sale, storage, or the keeping of intoxicating liquor on the premises sought to be licensed, and such an ordinance is not unconstitutional. *Hertenberger v. City of Texarkana*, 224 Ark. 235, 272 S.W.2d 435 (1954).

**Cited:** *Wynn Motel Hotel, Inc. v. City of Texarkana*, 217 Ark. 314, 230 S.W.2d 649 (1950); *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985).

## **14-54-105. Additional powers of cities of the second class.**

In order to better provide for the public welfare, safety, comfort, and convenience of their inhabitants, the following enlarged and additional powers are conferred upon cities of the second class:

(1)(A)(i) To regulate the use of sidewalks, and all structures and excavations thereunder, to require the owner or occupant of any premises to keep the sidewalks in front or alongside the premises free from obstruction, to build and maintain suitable pavement or sidewalk improvements therealong whenever they may become necessary to the safety or convenience of travel, and to designate the kind of sidewalk improvement to be made, the kind of material to be used by the owner or occupant, and the time within which the improvement is required to be completed.

(ii) The kind and character of sidewalk improvement for the same street or block shall be uniform.

(B)(i)(a) Sidewalk improvement shall be ordered, either by a general ordinance for all property owners or occupants on a certain street or within a certain block or quarter where the necessity of sidewalks is general to that extent, or by a resolution or order

adopted by the city council and notice served upon the particular individuals owning or occupying the premises where the special necessity exists.

(i)(1) In either case, the city shall have power to enforce obedience to the sidewalk ordinance, order, resolution, or notice upon the owners or occupants failing or refusing to obey them by the imposition of fines upon conviction in the city court, in like manner and with like consequence and effect as for a violation of any other ordinance of the city.

(2) Each day that the failure or refusal is continued shall constitute a separate offense.

(ii) After the owner upon notice, has failed to repair it, in cases where the sidewalk improvement shall be constructed by an occupant who holds the premises as a tenant or lessee, he shall have the right to deduct the cost thereof from the rent that may be due from him, or to hold the possession of the premises for such time as the rental value thereof will be sufficient to reimburse him for the cost.

(iii) Nothing contained in this subdivision shall be so construed as to prevent the city from proceeding by civil action or in any other manner provided by existing laws;

(2) To alter or change the width or extension of streets, sidewalks, alleys, avenues, parks, wharves, and other public grounds, and to vacate or lease out such portions thereof as may not for the time being be required for corporation purposes, and, where lands have been acquired or donated to the city for any object or purpose which has become impossible or impracticable to achieve, the lands may be used or devoted for other proper public or corporate purposes or sold by order of the city council and the proceeds applied for public or corporate purposes;

(3)(A) To punish, prevent, or remove encroachments or obstructions upon any of the streets, sidewalks, wharves, or other public grounds of the city whether by buildings, fences, or structures of any kind, posts, trees, or any other matter or thing whatsoever.

(B) No statute of limitations or lapse of time during which any obstruction or encroachment may have existed or been continued shall be permitted as a bar or defense against any proceeding or action to remove or abate it or to punish for its continuance after an order has been made by the city council for its removal or abatement;

(4)(A) To prevent and punish the bringing or importation into the city of any pauper, mendicant, diseased, or other person likely to become a burden on the city or any charity therein or become a charge upon the county in which the city is situated unless such action has been authorized by some competent officer in this state in a manner provided for by law;

(B) To punish the conductor of any train, captain of any boat or vessel, proprietor or driver of any stage or other conveyance, bringing any such person into the city unless the party providing conveyance can show that he had no reasonable grounds to know or become appraised of the condition or circumstances of such person;

(C) To prevent or regulate the carrying on of any trade, business, or vocation of a tendency dangerous to morals, health, or safety, or calculated to promote dishonesty or crime. To provide by ordinance for the punishment of dishonest practices of any kind, and for the prompt arrest and punishment of all dishonest characters or persons of known bad reputation, such as burglars, pickpockets, sneakthieves, forgers, fakirs, confidence men, common cheats, tricksters, and the like, who shall come into or be found within the corporate limits of the city without being able to give a good account of themselves, and to provide that, upon the trial of all such persons, evidence as to general character, reputation, association, and places frequented shall be admissible, and in all such cases to authorize a fine not exceeding one hundred dollars (\$100); and

(D) To prevent, abate, or remove nuisances of every kind, and to declare what are nuisances, and also to punish the authors or continuers thereof by fine or imprisonment, or both. However, no previous declaration shall be necessary as to any matter, act, or thing that would have been a nuisance at common law, and all nuisances may be proceeded against, either by order of the city council or by prosecution in the city court.

**History.** Acts 1897 (Ex. Sess.), No. 24, § 1, p. 69; C. & M. Dig., § 7684; Pope's Dig., § 9813; A.S.A. 1947, § 19-2305.

**A.C.R.C. Notes.** Pursuant to Acts 1971,

No. 153, references to "mayor's courts" in this section were changed to "city courts."

**Cross References.** Municipal streets generally, § 14-301-101 et seq.

## CASE NOTES

### ANALYSIS

In general.

Nuisances.

Streets, alleys, etc.

Trades, businesses, or vocations.

### In General.

Prior to this section, cities of the second class were subject to statute of limitations on recovering property in adverse possession. *City of Searcy v. Roberson*, 256 Ark. 1081, 511 S.W.2d 627 (1974).

### Nuisances.

If a business is a nuisance per se, the city may prevent it; if it is one which may become so by being improperly conducted, but which would not be so otherwise, then it may be so regulated as not to become a nuisance. *Bryan v. City of Malvern*, 122 Ark. 379, 183 S.W. 957 (1916).

Cities are not empowered to declare something to be a public nuisance that the state has clothed with legality, because state law is paramount and supreme. *City*

of Piggott v. Eblen, 236 Ark. 390, 366 S.W.2d 192 (1963).

### Streets, Alleys, Etc.

City is without power to organize an improvement district in a city for the purpose of opening, establishing, and creating an alley through property when no alley has ever been opened, dedicated, or provided for. *Lewis v. Rieff*, 114 Ark. 366, 169 S.W. 1184 (1914).

Board of public affairs was not given power to let contracts for repair of streets. *Connolly v. Lawhon*, 180 Ark. 964, 23 S.W.2d 990 (1930).

City that decided to abandon portion of street was authorized to make a conveyance of that portion abandoned to a property owner where grantee owned all of the land abutting portion of street vacated. *Barbee v. Carpenter*, 223 Ark. 660, 267 S.W.2d 768 (1954).

City had authority to close 200-foot section of a road in order to extend an airport landing strip where only five people and a few hunters used the road and the only



damage to these people was the inconvenience of traveling a mile further to reach a nearby state highway. *Kemp v. Simmons*, 244 Ark. 1052, 428 S.W.2d 59 (1968).

**Trades, Businesses, or Vocations.**

Ordinance granting to a person exclusive privilege of removing deposits from unsewered privies for a fixed period and to charge a certain sum therefor, to be paid by the owner of the premises, is a valid exercise of police power, if the ordinance is reasonable in its terms and designed solely for the protection of the public

health. *Dreyfus v. Boone*, 88 Ark. 353, 114 S.W. 718 (1908).

City may pass laws requiring inspection of plumbing, and they may charge fees to any person who follows that trade, or does any work of that character in the city, to help pay expenses of inspection. *Shaw v. City of Conway*, 179 Ark. 266, 15 S.W.2d 411 (1929).

Cities are not authorized to regulate hotels. *Bragg v. Adams*, 180 Ark. 582, 21 S.W.2d 950 (1929).

**Cited:** *Conner v. Burnett*, 216 Ark. 559, 226 S.W.2d 984 (1950).

**14-54-106. Cities and towns on state line.**

(a) All cities and towns which are located on the state line between Arkansas and any other state in which it is desired to erect a post office or other public building upon the state line or to create a park or lay out a street or boulevard upon, or adjacent to, the state line shall have power for these purposes to:

(1) Take lands by eminent domain, including the power to take the lands in fee simple as well as to take an easement across them;

(2) Take by eminent domain the title in, and to, lands occupied by streets or alleys and to close the streets and alleys and, where the lands are taken for a post office or other public building or its grounds, to sell and convey the fee simple title of it or of any part thereof to the federal government;

(3) Create improvement districts, including the whole or any part of the city or town in the manner provided by law for the creation of improvement districts in cities and towns, to aid the city or town in acquiring the lands needed for new streets and alleys where relocation of streets and alleys is made necessary or desirable by the improvements and for the purpose of paving the new streets and in relocating sewers and drains.

(b)(1) The procedure to be followed by the city to acquire property shall be that prescribed in Arkansas Constitution, Article 2, §§ 22, 23, and Article 12, § 9, and in §§ 14-54-601, 14-91-104, 14-262-102, 14-301-104, 14-333-101, 18-15-101 et seq., 23-11-209, and 23-12-303 for the exercise of the right of eminent domain by municipal corporations and counties.

(2) The order condemning lands for these purposes shall be by ordinance of the city council, with concurrence in the order by at least two-thirds ( $\frac{2}{3}$ ) of the members elected to the council.

(3) The decision of the city council that it is necessary to condemn lands in fee for any of these purposes shall not be subject to review except as provided in the Arkansas Constitution.

**History.** Acts 1931, No. 1, §§ 1-3; Pope's Dig., §§ 9521-9523; A.S.A. 1947, §§ 19-2306 — 19-2308.

**14-54-107. Aid to new industries.**

Cities and incorporated towns shall have full power to purchase sites for new factories or industries and to give other favorable grants and privileges for the purpose of establishing new and additional industries in or near their municipality.

**History.** Acts 1939, No. 68, § 6; A.S.A. 1947, § 19-2322. **Cross References.** Industrial commission for aiding new industries, § 14-163-201 et seq.

**14-54-108. Federal assistance.**

(a) Any city or town in this state, acting pursuant to authority of the legislative body thereof, is authorized to apply for and accept assistance or gifts in the form of funds or otherwise from the federal government, or any department, agency, or authority of the federal government, and to utilize these funds for any public purpose in the discretion of the legislative body of the city or town, consistent with restrictions, if any, placed thereon by the federal government.

(b) Any city or town in this state may contract with the federal government or any federal department, agency, or authority for the purpose of accepting assistance or gifts in the form of funds, or otherwise, upon such terms and conditions as may be agreed upon, and may utilize these funds for any public purpose.

**History.** Acts 1971, No. 268, §§ 1, 2; A.S.A. 1947, §§ 19-2348, 19-2349.

**SUBCHAPTER 2 — INTERSTATE AGREEMENTS**

- SECTION.  
14-54-201. Purpose.  
14-54-202. Authority to enter.  
14-54-203. Contents required.  
14-54-204. Approval by Attorney General.

- SECTION.  
14-54-205. Approval of state officer or agency.  
14-54-206. Filing requirements.  
14-54-207. Satisfaction of obligations.  
14-54-208. Liability and damages.

**14-54-201. Purpose.**

It is the purpose of this subchapter to permit any municipality in this state which borders on a state line and which is separated from a municipality in the adjoining state only by the state line to cooperate with the adjoining municipality in the other state in furnishing governmental services and facilities to the inhabitants of the adjoining municipalities to the end that governmental services and facilities may be adequately provided in the most efficient manner.

**History.** Acts 1965, No. 7, § 1; A.S.A. 1947, § 19-2337.

#### **14-54-202. Authority to enter.**

Any municipality in this state which borders on a state line, and which is separated from a municipality in an adjoining state only by the state line, may enter into agreements with the adjoining municipality whereby either of the municipalities agrees to furnish certain services or facilities for the other or whereby the municipalities agree to furnish, jointly or cooperatively, any governmental service or facility or to exercise or enjoy any power or authority which the Arkansas municipalities involved may furnish, exercise, or enjoy under the laws of this state to the extent that the laws of the state in which the adjoining municipality is located permit such joint or cooperative activity.

**History.** Acts 1965, No. 7, § 2; A.S.A. 1947, § 19-2338.

#### **14-54-203. Contents required.**

(a) Every agreement or contract entered into by a municipality of this state as authorized in § 14-54-202 shall specify the following:

- (1) Its duration;
- (2) The precise organization, composition, and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created;
- (3) Its purpose;
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor, or in the case of an agreement whereby one (1) municipality agrees to furnish specified services or facilities to the other municipality, the financial arrangement therefor;
- (5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and
- (6) Any other necessary and proper matters.

(b) If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to subdivisions (1) through (6) enumerated [sic] subsection (a) of this section, contain the following:

- (1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, municipalities party to the agreement shall be represented;
- (2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

**History.** Acts 1965, No. 7, §§ 3, 4; A.S.A. 1947, §§ 19-2339, 19-2340.



**14-54-204. Approval by Attorney General.**

(a) Every agreement made under this subchapter, prior to and as a condition precedent to its entry into force, shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state.

(b) The Attorney General shall approve any agreement submitted to him under this subchapter unless he shall find that it does not meet the conditions set forth in this subchapter and shall detail in writing addressed to the governing bodies of the municipalities concerned the specific respects in which the proposed agreement fails to meet the requirements of law.

(c) Failure to disapprove an agreement submitted under this subchapter within twenty (20) days of its submission shall constitute approval thereof.

**History.** Acts 1965, No. 7, § 6; A.S.A. 1947, § 19-2342.

**14-54-205. Approval of state officer or agency.**

(a) If any agreement made pursuant to this subchapter shall deal, in whole or in part, with the provisions of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having the power of control. The agreement shall be approved or disapproved by him or it, as to all matters within his or its jurisdiction, in the same manner and subject to the same requirements governing the action of the Attorney General as provided in § 14-54-204.

(b) This requirement of submission and approval shall be in addition to, and not in substitution for, the requirement of submission to, and approval by, the Attorney General.

**History.** Acts 1965, No. 7, § 9; A.S.A. 1947, § 19-2345.

**14-54-206. Filing requirements.**

No agreement entered into pursuant to this subchapter shall be effective until a copy of it has been filed in the office of the recorder of the county in which the affected Arkansas municipality is located and in the office of the Secretary of State.

**History.** Acts 1965, No. 7, § 7; A.S.A. 1947, § 19-2343.



### 14-54-207. Satisfaction of obligations.

No agreement made pursuant to this subchapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that, to the extent of actual and timely performance thereof by an adjoining municipality pursuant to an agreement entered into under this subchapter or by a joint board or other legal or administrative entity created by an agreement made under this subchapter, the performance may be offered in satisfaction of the obligation or responsibility.

**History.** Acts 1965, No. 7, § 5; A.S.A. 1947, § 19-2341.

### 14-54-208. Liability and damages.

(a) Every agreement or contract entered into pursuant to this subchapter shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the municipalities involved shall be the real parties in interest. The state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein.

(b) The action shall be maintainable against any municipality whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

**History.** Acts 1965, No. 7, § 8; A.S.A. 1947, § 19-2344; Acts 1993, No. 403, § 5; 1995, No. 1296, § 47.

The 1995 amendment substituted "damages or liability" for "damages of liability" in (a).

**Amendments.** The 1993 amendment substituted "case or controversy" for "case of controversy" in (a).

## SUBCHAPTER 3 — REAL AND PERSONAL PROPERTY

#### SECTION.

14-54-301. Ownership authorized.

14-54-302. Purchase, lease, and sale authorized.

#### SECTION.

14-54-303. Authority of incorporated towns.

**Cross References.** Property exempt from sale by virtue of execution, § 16-66-114.

**Preambles.** Acts 1953, No. 13 contained a preamble which read: "Whereas, the United States Government has in the past constructed a number of airfields in various places in Arkansas which at the close of World War II, it deeded to nearby or adjacent cities and which the United States Government now proposes to reac-

tivate, enlarge and improve, but before making improvements on any airport, the United States Government requires the conveyance to it of that airport; Now, therefore...."

Acts 1959, No. 159 contained a preamble which read: "Whereas, it is desirable to clarify any ambiguity now existing regarding the authority of Municipal Corporations to handle its real and personal property and to remove limitations which

may have heretofore existed regarding contracts and conveyances of real estate and personal property owned or held by Municipal Corporations or the leasing and renting of municipal property;

"Now, therefore...."

**Effective Dates.** Acts 1935, No. 176, § 4: Mar. 21, 1935. Emergency clause provided: "That this Act being necessary for the proper administration of municipal affairs, and the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage and approval." Approved March 21, 1935.

Acts 1953, No. 13, § 2: Jan. 29, 1953. Emergency clause provided: "It is hereby ascertained and declared that the United States Government has need to reactivate airfields which it has heretofore donated to municipalities in the State of Arkansas, and which are now needed for national defense; and this Act being necessary for the administration of municipal affairs and the preservation of public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be enforced from and after its passage and approval."

Acts 1959, No. 159, § 4: Mar. 4, 1959. Emergency clause provided: "This Act being necessary to clarify the power and authority vested in Municipal Corporations and being essential to the proper administration of municipal affairs and the public peace, health and safety, an emergency is hereby declared to exist and this Act shall take effect and be in force from and after its passage and approval."

Acts 1977, No. 823, § 3: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient operation of municipal government that ambiguities in the present law relating to the authority of municipal-

ities to buy, sell, lease, or otherwise deal with real and personal property be removed at the earliest possible date; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 183, § 5: Feb. 15, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 994 of 1981 contained some confusing language which caused difficulty in interpretation and resulted in an undue hardship; that it is necessary in the interest of clarity that Act 994 of 1981 be repealed and that the previous law relating to the subject matter covered in Act 994 be reinstated and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 729, § 4: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there exists no provision in current law to permit incorporated towns to alter streets and alleys for the good of the public; that as a result of this lack of authority, unnecessary hardships have been placed on the governing bodies of incorporated towns in this state who strive to provide for the public welfare, safety, comfort and convenience. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after its passage and approval."

## RESEARCH REFERENCES

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 532 et seq.

**C.J.S.** 63 C.J.S., Mun. Corp., § 950 et seq.

**14-54-301. Ownership authorized.**

Municipal corporations are authorized and empowered to acquire and hold real estate, tenements, hereditaments, and such other real and personal property as is necessary and proper for the administration of the affairs of municipal corporations.

**History.** Acts 1935, No. 176, § 1; Pope's Dig., § 9538; A.S.A. 1947, § 19-2309.

**14-54-302. Purchase, lease, and sale authorized.**

(a) Municipal corporations are empowered and authorized to buy, sell, convey, lease, rent, or let any real estate or personal property owned or controlled by the municipal corporations. This power and authorization shall extend and apply to all such real estate and personal property, including that which is held by the municipal corporation for public or governmental uses and purposes.

(b) Municipal corporations are also empowered and authorized to donate property, or any part thereof, to the federal government or any agency thereof, for any one (1) or more of the following purposes. Having the real estate, personal property, or both, activated, reactivated, improved, or enlarged by the donee, the municipal corporation may donate the fee simple title and absolute interest, without any reservations or restrictions, in and to all real estate, personal property, or both, or any part of the property, to the federal government, if this property was previously conveyed, or otherwise transferred, by the federal government to the municipal corporation, without cost to the municipal corporation. All other donation instruments shall contain provisions by which the title to the property donated shall revert to the municipal corporation when the donated property is no longer used by the donee for the purposes for which it was donated.

(c) The execution of all contracts and conveyances and lease contracts shall be performed by the mayor and city clerk or recorder, when authorized by a resolution, in writing, approved by a majority vote of the city council present and participating.

**History.** Acts 1935, No. 176, § 2; Pope's Dig., § 9539; Acts 1953, No. 13, § 1; 1959, No. 159, § 1; 1977, No. 823, § 1; 1983, No. 183, § 2; A.S.A. 1947, § 19-2310.

**Publisher's Notes.** This section was amended by Acts 1983, No. 183, § 2, which has been codified above; however, § 4 of the same act repealed, in addition to other provisions, Acts 1935, No. 176, § 2, the same being § 14-54-302 (this section).

As to contracts, leases, or other arrangements under Acts 1981, No. 994 declared binding, see Acts 1983, No. 183, § 3.

**Cross References.** Disposition of public use property, § 22-4-501 et seq.

Lease of county lands to municipality, § 14-16-109.

Sale or lease of county hospital to municipality, § 14-16-108.



## CASE NOTES

**Contracts Not Formally Authorized.**

Arkansas city having notice of its agent's transactions could not accept and enjoy the benefits under a contract for construction of airport facilities adjacent to city and then be permitted to contest the validity of the contract executed in its name by its agent on the ground that the contract was not formally authorized. *L.C. Eddy, Inc. v. City of Arkadelphia*, 303 F.2d 473 (8th Cir. 1962) (decision under prior law).

Failure to have agreement for lease of space on county property for street purposes authorized by a written resolution of the city council was not a fatal defect where city ratified agreement by performing obligations thereunder. *Harrison v. Boone County*, 238 Ark. 113, 378 S.W.2d 665 (1964) (decision under prior law).

Where, in an action brought by contractors against a city alleging a breach of contract to construct a sewer line, a failure by the city to collect charges from those individuals and businesses tying on to that sewer line, and a failure to remit those charges to the contractors for 15 years, there was substantial evidence sup-

porting the jury finding that the asserted contract existed between the parties, so that the contractors' recovery on theory of unjust enrichment or quantum meruit was not barred even though the contract had not been formally authorized or approved by the city council as required. *McCuistion v. City of Siloam Springs*, 268 Ark. 148, 594 S.W.2d 233 (1980) (decision under prior law).

Actions of the city constituted ratification of union contract, negotiated by board of commissioners, where an employee of the municipal utilities continued to work for the city several months after the chancery court had ruled the utilities were under the control of the board of directors, and where the union contract was being utilized and the city paid the employee sick leave benefits in keeping with the provisions of the union contract pursuant to the supplemental letter stating non-union employees would receive the contract benefits on the same terms as the union members. *City of Benton v. Powers*, 269 Ark. 853, 601 S.W.2d 260 (Ct. App. 1980) (decision under prior law).

**14-54-303. Authority of incorporated towns.**

In order to better provide for the public welfare, safety, comfort, and convenience of their inhabitants, incorporated towns may alter or change the width or extension of streets, sidewalks, alleys, avenues, parks, wharves, and other public grounds, and vacate or lease out such portions thereof as may not for the time being be required for corporation purposes, and, where lands have been acquired or donated to the town for any object or purpose which has become impossible or impracticable to achieve, the lands may be used or devoted for other proper public or corporate purposes or sold by order of the town council and the proceeds applied for public or corporate purposes.

**History.** Acts 1989, No. 729, § 1.

## SUBCHAPTER 4 — PUBLIC PROPERTY FOR PROCESSING CRUDE BIOGENIC GASES

## SECTION.

14-54-401. Authority to lease, etc.

14-54-402. Bidding process.

## SECTION.

14-54-403. Implementing legislation.

14-54-404. Authority to issue bonds.

**Publisher's Notes.** Acts 1983, No. 478, is also codified as § 14-16-301 et seq.

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#### **14-54-401. Authority to lease, etc.**

Each city of the first or second class and incorporated town shall have the authority to lease, let, sell, or convey any real property owned or controlled by the city or town for the production, reclamation, and refining of crude biogenic gases pursuant to competitive sealed bidding procedures under this subchapter.

**History.** Acts 1983, No. 478, § 1; A.S.A. 1947, § 19-2356.

#### **14-54-402. Bidding process.**

(a)(1) The mayor, city manager, or city administrator shall publish a notice inviting sealed bids for the leasing, letting, selling, or conveying of real property for the production, reclamation, and refining of crude biogenic gases. This notice shall be published in a legal newspaper in the county where the property is located one (1) time each week for the four (4) weeks immediately prior to the date set for receiving bids.

(2) No bid shall be received, accepted, or considered when received after the date set for the receipt of bids.

(b)(1) Within thirty (30) days after the date set for the receipt of bids, the bids shall be opened and read at a public meeting of the city council, board of directors, commissioners, or managers.

(2)(A) At the meeting, the city council, board of directors, commissioners, or managers shall select and award the lease to the property or award the property to the highest, responsible, and best bidder.

(B) The city council, board of directors, commissioners, or managers may reject all bids and begin the bidding process anew.

**History.** Acts 1983, No. 478, § 2; A.S.A. 1947, § 19-2357.

#### **14-54-403. Implementing legislation.**

Each city of the first or second class and incorporated town may provide by ordinance for the implementation of, but not contrary to, this subchapter.

**History.** Acts 1983, No. 478, § 3; A.S.A. 1947, § 19-2358.



### 14-54-404. Authority to issue bonds.

This subchapter shall not limit the authority of any city of the first or second class or incorporated town to lease, let, sell, or convey any real property pursuant to the Constitution and laws of Arkansas concerning the issuance of bonds for the purpose of industrial development and other lawful purposes.

**History.** Acts 1983, No. 478, § 4; A.S.A. 1947, § 19-2359.

## SUBCHAPTER 5 — AREAS ADJACENT TO SHOPPING CENTERS

### SECTION.

14-54-501. Authority to control use.

14-54-502. Plat of area.

14-54-503. Posting of signs, etc. — Penalty.

### SECTION.

14-54-504. Policing of area.

14-54-505. Tort liability unchanged.

**Publisher's Notes.** Acts 1973, No. 472, as amended, is also codified as § 14-16-401 et seq.

**Effective Dates.** Acts 1977, No. 796, § 3: Mar. 28, 1977. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds that the matters affected by this Act have a direct relation to the administration of justice and the

preservation of public order and safety in the areas affected. Therefore, an emergency is hereby found and declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

### 14-54-501. Authority to control use.

The governing bodies of the municipalities of this state are delegated the power and authority to enact ordinances to limit and control the use of areas adjacent to shopping centers and other commercial enterprises which are privately owned, but which are maintained for the convenience of the public, so as to provide ingress and egress, loading and unloading areas, fire lanes, parking spaces, parking areas designated for the exclusive use of disabled persons, and other measures for the safety and convenience of the public.

**History.** Acts 1973, No. 472, § 1; 1985, No. 527, § 1; A.S.A. 1947, § 19-2350.

### 14-54-502. Plat of area.

(a) No ordinance shall be passed unless and until the owner or lessee of an area sought to be regulated has presented to the governing body of the city a plat of the area upon which is shown the proposed limitations and controls.

(b) The plat shall in no way limit the power and authority of the governing body of the municipality but shall be advisory only.

**History.** Acts 1973, No. 472, § 2;  
A.S.A. 1947, § 19-2351.

### **14-54-503. Posting of signs, etc. — Penalty.**

(a) When an ordinance has been passed, the owner or lessee of the area to be controlled shall, at his expense, post the signs, paint the lines, arrows, and curbings in the required colors, and install the devices and signals to apprise the public of the existence of the ordinance.

(b) Thereafter, persons who violate these ordinances shall be punished as provided in the ordinances. However, no fine shall be less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).

**History.** Acts 1973, No. 472, § 3;  
A.S.A. 1947, § 19-2352.

### **14-54-504. Policing of area.**

(a) No municipality shall be required to patrol the area which is controlled as provided in this subchapter, but, upon being called, law enforcement officers shall come to the scene of the alleged violation and, where warranted by law or ordinance, issue citations or make arrests.

(b) This section is cumulative to other laws on this subject and specifically does not repeal § 16-81-108.

**History.** Acts 1973, No. 472, § 4; 1977,  
No. 796, §§ 1, 2; A.S.A. 1947, §§ 19-2353,  
19-2353.1.

### **14-54-505. Tort liability unchanged.**

Nothing in this subchapter shall limit or extend the law of this state with reference to tort liability of any person, firm, or corporation.

**History.** Acts 1973, No. 472, § 5;  
A.S.A. 1947, § 19-2354.

## **SUBCHAPTER 6 — PUBLIC IMPROVEMENTS**

#### **SECTION.**

14-54-601. Authority generally.

14-54-602. Drainage of property.

#### **SECTION.**

14-54-603. Assessment of property.

14-54-604. Collection of liens.

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**Cross References.** Creation of improvement districts for making municipal improvements, § 14-88-201.

**Effective Dates.** Acts 1875, No. 1,  
§ 95: effective on passage.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 560 et seq.

C.J.S. 63 C.J.S., Mun. Corp., § 1035 et seq.

CASE NOTES

Illegal Contracts.  
A city which obtains physical improvements pursuant to an illegal contract may

be held liable for the value of the improvements. City of Damascus v. Bivens, 291 Ark. 600, 726 S.W.2d 677 (1987).

14-54-601. Authority generally.

Municipal corporations shall have power to:

(1) In regard to streets, alleys, public grounds, wharves, landing places, and marketplaces, lay off, open, widen, straighten, and establish them; improve and keep them in order and repair; and light;

(2) Open, construct, keep in order, and repair sewers and drains; and

(3) Enter upon, or take, for such of the above purposes as may be required, land or material, and to assess and collect a charge on the owners of lots or lands, or on lots or lands through or by which a street, alley, or public highway shall pass, for the purpose of defraying the expenses of constructing, improving, repairing, or lighting the street, alley, or public highway, to be in proportion to the value of the lot or land as assessed for taxation under the general law of the state.

**History.** Acts 1875, No. 1, § 18, p. 1; C. & M. Dig., §§ 4006, 7568; Pope's Dig., §§ 5008, 9642; A.S.A. 1947, § 19-2313.

CASE NOTES

ANALYSIS

In general.  
Enter upon, or take.  
Sewers and drains.  
Streets, alleys, etc.  
—In general.  
—Authority.  
—Liabilities.  
Value.

In General.

Former statute was held not mandatory. City of Little Rock v. Willis, 27 Ark. 572 (1872) (decision under prior law).

For the exercise of a lawful power that by law was vested in the judgement and discretion of a municipal corporation, no injury for which an action would lie could have been committed; however, for the imperfect, negligent, unskillful execution of a thing ordained to be done, an action

would lie, in the absence of an express statute. City of Little Rock v. Willis, 27 Ark. 572 (1872) (decision under prior law).

Enter Upon, or Take.

A city has the right to condemn streets across a railroad. St. Louis & S.F.R.R. v. City of Fayetteville, 75 Ark. 534, 87 S.W. 1174 (1905).

Where municipal corporation possesses right to take property by eminent domain and does take property that might have been condemned by the exercise of that power, remedy of landowner is to sue for damages at law and is not to seek mandatory process to compel withdrawal. Dobbs v. Town of Gillett, 119 Ark. 398, 177 S.W. 1141 (1915).

Municipal corporation may condemn land for drains and sewers. Young v. City of Gurdon, 169 Ark. 399, 275 S.W. 890 (1925).



This section does not give a municipal corporation the power of eminent domain outside the municipality for the purpose of acquiring a right of way for electric transmission lines. *City of Osceola v. Whistle*, 241 Ark. 604, 410 S.W.2d 393 (1966).

### **Sewers and Drains.**

Individual may file suit against municipal corporation for damages from discharge of sewage into his running streams. *McLaughlin v. City of Hope*, 107 Ark. 442, 155 S.W. 910 (1913).

### **Streets, Alleys, Etc.**

#### **—In General.**

"Streets" includes road, gutters, and sidewalk. *Eickhoff v. Street Imp. Dist. No. 11*, 120 Ark. 212, 179 S.W. 367 (1915); *Willis v. City of Ft. Smith*, 121 Ark. 606, 182 S.W. 275 (1916).

#### **—Authority.**

Individual who purchases land subsequent to closing of street by consent of municipal council cannot compel opening of street without proving special injuries. *Ruffner v. Phelps*, 65 Ark. 410, 46 S.W. 728 (1898).

Municipal corporation was held not authorized to vacate streets. *City of Texarkana v. Leach*, 66 Ark. 40, 48 S.W. 807 (1898).

Authority to exchange streets for other property is not vested in the mayor and council of a municipality. *Beebe v. City of Little Rock*, 68 Ark. 39, 56 S.W. 791 (1900).

Where improvement district in a municipality was organized for the purpose of improving a street, the board of commissioners acquired no control over the street except for the purpose of making the improvement, and when the object was accomplished, the street became subject to the exclusive control of the municipality. *Pulaski Gaslight Co. v. Rimmel*, 97 Ark. 318, 133 S.W. 1117 (1911).

The state, in its sovereignty over all public highways, has full power over streets as well as over public roads and, unless prohibited by the Arkansas Constitution, the legislature may confer, as it shall deem best, the power of supervision and control of streets. *Sanderson v. City of Texarkana*, 103 Ark. 529, 146 S.W. 105 (1912).

Municipal corporation is without power

to organize an improvement district in municipality for the purpose of opening, establishing, and creating an alley through property when no alley has ever been opened, dedicated, or provided for. *Lewis v. Rieff*, 114 Ark. 366, 169 S.W. 1184 (1914).

Neither the mayor nor street committee of a municipal council had authority to contract for the improvement of city streets; rather, the municipal council alone can contract for these improvements. *Venable v. Town of Plummerville*, 130 Ark. 477, 198 S.W. 106 (1917).

The legislature, in granting to municipal corporations the exclusive power to open streets and alleys, did not lose its authority to withdraw such power and vest it in another agency. *Bulloch v. Dermott-Collins Rd. Imp. Dist.*, 155 Ark. 176, 244 S.W. 327 (1922), *rev'd on other grounds*, 265 U.S. 570, 44 S. Ct. 457, 68 L. Ed. 1184 (1924).

Municipal council has no power to permit permanent operation and maintenance of a filling station in the street, and such license, if granted, would confer no vested right or irrevocable right to operate the filling station. *Sander v. City of Blytheville*, 164 Ark. 434, 262 S.W. 23 (1924).

Municipal council had authority to make contracts for furnishing the municipality with patching material and labor to do repair work. *Connelly v. Lawhon*, 180 Ark. 964, 23 S.W.2d 990 (1930).

Municipal corporation is authorized to build crossing over railroad tracks. *St. Louis-San Francisco Ry. v. Smith*, 182 Ark. 299, 31 S.W.2d 407 (1930).

Municipal corporation has the power and duty to make reasonable provision for safety of persons and property using its streets by the enactment of ordinances, resolutions, or bylaws looking to that end, and municipal authorities have a wide discretion on these matters. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

Resolution authorizing construction of dividing curb along center of boulevard, making it a four lane highway and permitting crossings only at street intersections, was held not arbitrary, unreasonable, or discriminatory against owner of tourist camp in center of a long block, whose prospective customers would be prevented from turning to the left into his property,

but would have to drive to the next intersection and return. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

Municipality did not abuse its discretion in enacting ordinance for establishing of parking meters in front of business even though business was deprived of suitable loading and unloading space. *City of Marianna v. Gray*, 220 Ark. 468, 248 S.W.2d 379 (1952), *aff'd*, 222 Ark. 947, 265 S.W.2d 496 (1954).

Municipal corporation cannot bind itself by perpetual contract or by one that lasts an unreasonable time, and any attempt on the part of a municipality to enter into a contract relating to the permanent establishment or abandonment of its streets would be *ultra vires*. *Risser v. City of Little Rock*, 225 Ark. 318, 281 S.W.2d 949 (1955), *cert. denied*, 350 U.S. 965, 76 S. Ct. 439, 100 L. Ed. 838 (1956).

Municipality had authority to close 200-foot section of road in order to extend airport landing strip and open and improve new road along side of airport to give residents on closed section of old road access to state highway where only five people and a few hunters used the section closed and the only damage to these people was the inconvenience of traveling a mile further to reach the state highway.

*Kemp v. Simmons*, 244 Ark. 1052, 428 S.W.2d 59 (1968).

#### —Liabilities.

Municipal corporations have authority to lay out, open, grade, and keep in good repair the streets of a municipality and a suit would not lie at the instance of an individual for damages resulting from injuries to private property from the lawful exercise of this authority where there has been no negligence, or want of care or skill in its exercise. *Simmons v. Camden*, 26 Ark. 276 (1870) (decisions under prior law).

Municipal corporation is not liable for damages sustained by a party injured through defects in streets of the municipality. *City of Arkadelphia v. Windham*, 49 Ark. 139, 4 S.W. 450 (1887); *City of Ft. Smith v. York*, 52 Ark. 84, 12 S.W. 157 (1889); *Birchfield v. Diehl*, 126 Ark. 115, 189 S.W. 845 (1916).

#### Value.

When lots are assessed for street improvement, the assessment shall be *ad valorem*, and not according to frontage, and upon both vacant and occupied lots similarly situated. *Town of Monticello v. Banks*, 48 Ark. 251, 2 S.W. 852 (1887).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968).

### 14-54-602. Drainage of property.

Municipal corporations shall have power to cause any lot of land within their limits to be raised up or drained on which or on part of which water shall at any time become stagnant, and to cause all putrid substance, whether animal or vegetable, to be removed from any lot or lots.

**History.** Acts 1875, No. 1, § 20, p. 1; C. & M. Dig., § 7535; Pope's Dig., § 9610; A.S.A. 1947, § 19-2315.

### 14-54-603. Assessment of property.

(a) Each municipal corporation may prescribe, either by general or special bylaws or ordinance, the mode in which the charge on the respective owners of lots or lands and on the lots or lands shall be assessed and determined for the purpose authorized by the provisions of this subchapter.

(b) A charge, when assessed, shall be payable by the owners at the time of the assessment, personally, and shall also be a lien on the



respective lots or parcels of land in the possession of any owner from the time of assessment.

**History.** Acts 1875, No. 1, § 19, p. 1; C. & M. Dig., § 7569; Pope's Dig., § 9645; A.S.A. 1947, § 19-2314.

**Cross References.** Correction of assessments by county court, § 26-73-205.

### 14-54-604. Collection of liens.

(a) The amount of the lien provided for in §§ 14-54-601 — 14-54-603 may be determined by action against the owner of any lot.

(b) The amount ascertained, with cost of suit and five percent (5%) penalty for collection, shall be certified by the mayor to the clerk of the county, and placed by him on the taxbook as delinquent taxes, and collected accordingly.

(c) The amount, when so collected, shall be paid to the city by the county collector.

**History.** Acts 1875, No. 1, § 21, p. 1; C. & M. Dig., § 7536; Pope's Dig., § 9611; A.S.A. 1947, § 19-2316.

**Cross References.** Collection of delinquent assessment for opening or improving street or alley, § 14-301-104.

## SUBCHAPTER 7 — PUBLIC UTILITIES

### SECTION.

14-54-701. Authority generally.

14-54-702. Construction or acquisition of waterworks.

### SECTION.

14-54-703. Municipal ice plants.

14-54-704. Contracts for utility services.

**Cross References.** Municipal boards and commissions, § 14-201-301 et seq.

Public utilities generally, § 14-199-101.

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1901, No. 186, § 2: effective on passage.

Acts 1903, No. 88, § 2: became law without Governor's signature, Mar. 20, 1903.

Acts 1909, No. 230, § 2: effective on passage.

Acts 1915, No. 163, § 2: approved Mar. 19, 1915. Emergency declared.

Acts 1923, No. 101, § 2: approved Feb. 10, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety it should take effect and be in force from and after its passage."

Acts 1933, No. 101, § 3: effective 90 days after passage.

## RESEARCH REFERENCES

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 560 et seq.

**C.J.S.** 62 C.J.S., Mun. Corp., § 292. 63 C.J.S., Mun. Corp., § 1050 et seq.

### 14-54-701. Authority generally.

(a)(1) Municipal corporations shall have power to provide for, or construct, or acquire works for lighting the streets, alleys, parks, and other public places by gas, electricity, or otherwise; to furnish power to consumers; or to purchase power, gas, or electricity for these purposes from any individual, company, or corporation manufacturing it.

(2) In connection therewith, they may furnish lights and power to private consumers upon just compensation therefor and authorize construction of gas or electric works and street railroads.

(b)(1) Improvement districts created within municipal corporations, or that embrace or include territory therein, which are organized for the purpose of manufacturing, distributing, and selling either gas or electricity shall have the same right granted to municipal corporations to purchase power, gas, or electricity from any individual, company, or corporation manufacturing or distributing it for use in any of their plants or for resale or distribution to their customers or patrons.

(2) The exercise of this right shall not be construed in any way to impair or affect the validity of any bond issue or any other indebtedness of an improvement district.

**History.** Acts 1875, No. 1, § 14, p. 1; 1901, No. 186, § 1, p. 341; 1909, No. 230, § 1, p. 695; C. & M. Dig., § 7565; Acts 1923, No. 101, § 1; Pope's Dig., § 9639; A.S.A. 1947, § 19-2318.

**Cross References.** Municipal authority over utilities, § 14-200-101 et seq.

### CASE NOTES

#### ANALYSIS

In general.  
Appeals.  
Bonds.  
Contracts.  
Liability.  
Rates.

#### In General.

Power to construct water and light systems for domestic purposes may be conferred by legislature on municipalities. *Bank of Commerce v. Huddleston*, 172 Ark. 999, 291 S.W. 422 (1927).

#### Appeals.

Where, in an eminent domain proceeding to procure an easement across property, chancellor held that the municipality had authority to enter and take private property for the lawful purpose of furnishing light and power to consumers in connection with operation of municipal corporation, the chancellor's order was not appealable because it was not a final judgment in that it did not determine right of

landowners to just compensation. *Hyatt v. City of Bentonville*, 275 Ark. 210, 628 S.W.2d 326 (1982).

#### Bonds.

That municipally owned electric light plant had been leased and generating machinery was not in use, current being supplied to the distributing system from outside sources, was held immaterial in determining whether municipality was entitled to issue bonds for construction of ornamental standards and electric lighting equipment to provide modern "white way" illumination for designated streets. *Todd v. McCloy*, 196 Ark. 832, 120 S.W.2d 160 (1938).

#### Contracts.

Municipal council has authority to pass an ordinance providing for lighting the streets, parks and other public places in the city, and when the ordinance is properly passed and accepted by the contractor, it becomes a contract and is governed

by the same rules and principles that control other contracts. *City of Mena v. Tomlinson Bros.*, 118 Ark. 166, 175 S.W. 1187 (1915).

#### **Liability.**

In the grant of a franchise to a street railway company, municipal corporation has power to reserve the right to pass ordinances for the protecting of the person and property of individuals and creating a liability against the company in their favor for a violation of the ordinance, but when no such reservation was made in the grant of the franchise, the violation of an ordinance subsequently passed could not become the basis of a liability for personal

injuries. *Bain v. Fort Smith Light & Traction Co.*, 116 Ark. 125, 172 S.W. 843 (1915).

#### **Rates.**

Legislature intended to include in this section authority to agree upon rates to be charged during life of a lighting franchise. *Town of Pocahontas v. Central Power & Light Co.*, 152 Ark. 276, 244 S.W. 712, appeal dismissed, 260 U.S. 755, 43 S. Ct. 94, 67 L. Ed. 498 (1922).

**Cited:** *City of N. Little Rock v. Gorman*, 264 Ark. 150, 568 S.W.2d 481 (1978); *Cosgrove v. City of W. Memphis*, 327 Ark. 324, 938 S.W.2d 827 (1997).

### **14-54-702. Construction or acquisition of waterworks.**

(a) Municipal corporations shall have power to:

(1) Provide a supply of water by constructing or acquiring, by purchase or otherwise, wells, pumps, cisterns, reservoirs, or other waterworks and to regulate them;

(2) Prevent unnecessary waste of water; and

(3) Prevent pollution of water or injury to waterworks.

(b) For the purpose of establishing and supplying waterworks, any municipal corporation may go beyond its territorial limits. Its jurisdiction to prevent or punish any pollution or injury to the stream or source of water, or to the waterworks, shall extend five (5) miles beyond the corporate limits.

**History.** Acts 1875, No. 1, § 14, p. 1; 1903, No. 88, § 1, p. 152; C. & M. Dig., § 7564; Pope's Dig., § 9638; A.S.A. 1947, § 19-2317.

**Cross References.** Waterworks and water supply, § 14-234-101 et seq.

### **CASE NOTES**

#### **ANALYSIS**

Constitutionality.

In general.

Financing.

Rates.

Repairs.

#### **Constitutionality.**

This section conferring authority on municipalities to establish waterworks is a valid exercise of legislative power. *Bank of Commerce v. Huddleston*, 172 Ark. 999, 291 S.W. 422 (1927).

#### **In General.**

Municipal corporations are authorized to construct or acquire waterworks. *Hope*

*v. Dodson*, 166 Ark. 236, 266 S.W. 68 (1924).

Municipal corporation is authorized to purchase a water supply for distribution to its inhabitants from another municipality or any other source. *McGehee v. Williams*, 191 Ark. 643, 87 S.W.2d 46 (1935).

#### **Financing.**

Municipal corporations may borrow money to pay expense of moving the pumping station of their water plant. *Forrest City v. Bank of Forrest City*, 116 Ark. 377, 172 S.W. 1148 (1915).

#### **Rates.**

Ordinance providing that if the water company should become dissatisfied with



its flat rate it could, after installing a meter at its expense, require consumer to pay at meter rates is valid. *Wilson Water & Elec. Co. v. City of Arkadelphia*, 95 Ark. 605, 129 S.W. 1091 (1910).

**Repairs.**

Repairs are not restricted to reconstruc-

tion in identical form in which water-works were originally constructed. *Arkansas Light & Power Co. v. City of Paragould*, 146 Ark. 1, 225 S.W. 435 (1920).

**Cited:** *Cosgrove v. City of W. Memphis*, 327 Ark. 324, 938 S.W.2d 827 (1997).

**14-54-703. Municipal ice plants.**

(a) Cities of the first and second class shall have the authority, in addition to the powers now granted by law, to construct, maintain, and operate municipal ice plants.

(b)(1) Funds may be used for the construction, maintenance, and operation of ice plants derived from the operation of any other public utility owned or operated by the city.

(2) This subsection shall not apply to public utilities constructed, owned, or operated by an improvement district.

**History.** Acts 1933, No. 101, §§ 1, 2; Pope's Dig., §§ 9974, 9975; A.S.A. 1947, §§ 19-2320, 19-2321.

**14-54-704. Contracts for utility services.**

(a) For the purpose of providing water, gas, electric lights, heat, power, cold storage, street railroads, emergency medical services, and other public utility necessities for itself and for the inhabitants of any municipality, the mayor and city council, or the other governing bodies of municipalities having a commission, administrator, or city manager form of government, may contract on its own behalf, and on behalf of the inhabitants of the municipality, with any person or company to construct and operate the utility and may grant to the person or company, whether municipally owned and operated or otherwise, for a time which may be agreed on, for the privilege, exclusive or otherwise, of using the streets, alleys, and public grounds of the municipality for such purposes, on such rates, charges, and terms as may be agreed upon.

(b) The mayor and council or other governing body may authorize the person or company to assign the contract or privileges and to transfer the utility to any other person, or company having authority to conduct any such business in the municipality, with full authority to assignee or transferee to enjoy and use them, in like manner and to the same extent, as the assignor could have done.

**History.** Acts 1875, No. 1, § 14, p. 1; 1915, No. 163, § 1, p. 692; C. & M. Dig., § 7492; Acts 1929, No. 122, § 1; 1929, No. 291, § 1; Pope's Dig., §§ 9535, 9537; Acts 1981 (Ex. Sess.), No. 23, § 9; A.S.A. 1947, § 19-2319.

**Publisher's Notes.** Acts 1985, No. 1001, § 8, provided that nothing in the act repealed, by implication or otherwise, Acts 1981 (Ex. Sess.), No. 23, part of which is codified in this section.

The former last part of subsection (b) of



this section provided that all assignments and transfers that had been made were ratified and approved.

**Cross References.** Rate-making authority of Arkansas Public Service Commission, § 23-4-201.

## CASE NOTES

### ANALYSIS

Authority.  
Privilege, exclusive or otherwise.  
Rates.

#### Authority.

Municipal corporation is empowered to contract with any person or corporation to construct and operate waterworks. *Lackey v. Fayetteville Water Co.*, 80 Ark. 108, 96 S.W. 622 (1906).

Franchise granted to a corporation to furnish gas for heat, light, and power becomes, when accepted, a binding contract to be governed by the same rules and principles that control other contracts. *Natural Gas & Fuel Corp. v. Norphlet Gas & Water Co.*, 173 Ark. 174, 294 S.W. 52 (1927).

#### Privilege, Exclusive or Otherwise.

Municipal council may grant an exclusive privilege or not, as in their judgment seems best. *City of El Dorado v. Coats*, 175 Ark. 289, 299 S.W. 355 (1927).

Electric power company that occupied some territory of a town prior to its incorporation did not prevent the town from granting to another company an exclusive privilege to use the streets of the town for furnishing electricity. *Arkansas Power & Light Co. v. West Memphis Power & Water Co.*, 187 Ark. 41, 58 S.W.2d 206 (1933).

#### Rates.

Injunction would not be granted to protect contract rates when contract for change in rates was disapproved and rendered inoperative by referendum. *City of Texarkana v. Southern Cities Distrib. Co.*, 64 F.2d 944 (8th Cir.), cert. denied, 290 U.S. 650, 54 S. Ct. 67, 78 L. Ed. 563 (1933) (decision prior to § 23-4-201).

**Cited:** *City of Ft. Smith v. Arkansas Pub. Serv. Comm'n*, 278 Ark. 521, 648 S.W.2d 40 (1983); *L & H San., Inc. v. Lake City San., Inc.*, 769 F.2d 517 (8th Cir. 1985).

## SUBCHAPTER 8 — PUBLIC HEALTH

### SECTION.

14-54-801. Nurses' training schools.  
14-54-802. Regulation of burials generally.

### SECTION.

14-54-803. Power to require burial outside municipal limits.  
14-54-804. [Repealed.]

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1901, No. 70, § 2: effective on passage.

Acts 1901, No. 102, § 2: effective on passage.

Acts 1929, No. 202, § 2: effective on passage.

## RESEARCH REFERENCES

**ALR.** Regulation of private landowner's disposal of solid waste on own property. 37 ALR 4th 635.

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 439.

**C.J.S.** 62 C.J.S., Mun. Corp., §§ 133, 265, 270.

**14-54-801. Nurses' training schools.**

Cities of the first class are authorized and empowered to establish and maintain training schools for the education of trained nurses in connection with city hospitals and to issue, under the hand of the mayor and corporate seal of the city and attested by the city clerk, diplomas to nurses graduating from these training schools.

**History.** Acts 1901, No. 70, § 1, p. 118; C. & M. Dig., § 7752; Pope's Dig., § 10051; A.S.A. 1947, § 19-2334.

**14-54-802. Regulation of burials generally.**

(a) Municipal corporations shall have the power to:

- (1) Regulate the burial of the dead;
- (2) Provide, outside the corporate limits of the corporation, places for the interment of the dead; and
- (3) Prevent any such interment within any such limits, except in public burying grounds established before the adoption of this section.

(b) Municipal corporations may not only impose proper fines and penalties but shall also have power to cause any body interred contrary to this prohibition to be taken up and buried outside the limits of the municipality.

**History.** Acts 1875, No. 1, § 15, p. 1; C. & M. Dig., § 7534; Pope's Dig., § 9609; A.S.A. 1947, § 19-2323.

**Cross References.** Eminent domain for cemetery purposes, § 18-15-1401 et seq.

**CASE NOTES****Corporate Limits.**

Under this section, a municipal corporation is authorized to acquire land within

the municipal limits for a public cemetery. City of Ft. Smith v. Wilson, 100 Ark. 587, 140 S.W. 733 (1911).

**14-54-803. Power to require burial outside municipal limits.**

(a) Cities of the first and second class and incorporated towns shall have the power to prohibit the burial of the dead within their limits.

(b)(1) Where old and abandoned burial grounds which are no longer kept up or used as such are situated within the limits of any such city or incorporated town, it may, by suitable ordinance, require persons having dead buried therein to cause them, within some reasonable time, to be removed and buried beyond the limits of the city or incorporated town.

(2) In the event the bodies are not removed within the time specified in the ordinance of the city or incorporated town, after the ordinance has been published in the mode and manner prescribed by law, then the city or incorporated town may itself have the remains of all such persons as can be found removed and buried, as provided in this section. It may then and not before, by proper ordinance, vacate the cemetery or burial ground and declare that it is not any longer a cemetery

exclusively used as such. Thereafter, the property shall become subject to taxation like other property.

**History.** Acts 1901, No. 102, § 1, p. 202, § 1; Pope's Dig., § 9697; A.S.A. 1947, 168; C. & M. Dig., § 7602; Acts 1929, No. § 19-2324.

14-54-804. [Repealed.]

**Publisher's Notes.** This section, concerning municipal trash dumps, was repealed by Acts 1995, No. 555, § 1. The section was derived from Acts 1969, No. 171, §§ 1, 2; A.S.A. 1947, §§ 19-2346, 19-2347.

SUBCHAPTER 9 — REGULATION OF UNSANITARY CONDITIONS

SECTION.

14-54-901. Municipal authority.  
14-54-902. Notice to unknown or nonresident owners.

SECTION.

14-54-903. Refusal of owner to comply.  
14-54-904. Enforcement of lien for clearance by municipality.

**Effective Dates.** Acts 1979, No. 339, § 3: Mar. 9, 1979. Emergency clause provided: "It has been found and declared by the General Assembly of the State of Arkansas that the Municipalities of this State have the duty and responsibility to protect the public health and welfare by cutting unsightly weed lots when the property owner neglects to do so. It has also been found and declared by the General Assembly of the State of Arkansas that said Municipalities are experiencing great difficulty in collecting the costs for weedcutting, and that this Act will provide alternative means of collection of said costs to remedy this situation. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, safety, and welfare, shall be in full

force and effect after its passage and approval."  
Acts 1983, No. 80, § 2: Feb. 8, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that an emergency exists with reference to the ability of municipalities in this State to cure problems of unsightly and unsanitary conditions on real property and problems relating to the removal of dilapidated and unsafe structures by reason of the inability of said municipalities to effectively recover the expenses to the public in performing such public health functions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

**ALR.** Regulation of private landowner's disposal of solid waste on own property. 37 ALR 4th 635.  
**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 455 et seq.  
**C.J.S.** 62 C.J.S., Mun. Corp., § 265, 279-281.  
**UALR L.J.** Survey, Property, 12 UALR L.J. 659.



**14-54-901. Municipal authority.**

Incorporated towns and cities of the first and second class are empowered to order the owner of lots and other real property within their towns or cities to cut weeds; to remove garbage, rubbish, and other unsightly and unsanitary articles and things upon the property; and to eliminate, fill up, or remove stagnant pools of water or any other unsanitary thing, place, or condition which might become a breeding place for mosquitoes, flies, and germs harmful to the health of the community, after the town or city has provided therefor by an ordinance to that effect.

**History.** Acts 1943, No. 100, § 1;  
A.S.A. 1947, § 19-2325.

**14-54-902. Notice to unknown or nonresident owners.**

(a) In case the owner of any lot or other real property is unknown or his whereabouts is not known or he is a nonresident of this state, then a copy of the written notice referred to in § 14-54-903 shall be posted upon the premises. Before any action to enforce the lien shall be had, the recorder of the town or the city clerk shall make an affidavit setting out the facts as to unknown address or whereabouts of nonresidents.

(b) Thereupon, service of the publication, as provided for by law against nonresident defendants, may be had. An attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if it can be found.

(c) Except as provided in subsection (b) of this section, notices required by this subchapter shall be published, mailed, or delivered by the municipal recorder or clerk or such other person as designated by the governing body of the municipality.

**History.** Acts 1943, No. 100, § 3;  
A.S.A. 1947, § 19-2327; Acts 1989, No.  
239, § 2.

**14-54-903. Refusal of owner to comply.**

(a) If the owner of any lot or other real property within an incorporated town or city shall neglect or refuse to remove, abate, or eliminate any condition as may be provided for under an ordinance passed by the city or town as provided for in § 14-54-901, after having been given seven (7) days' notice in writing to do so, then the town or city is authorized to do whatever is necessary to correct the condition and to charge the cost thereof to the owner of the lots or other real property.

(b) The town or city is given a lien against the property for the costs.

**History.** Acts 1943, No. 100, § 2;  
A.S.A. 1947, § 19-2326; Acts 1989, No.  
239, § 1.



**14-54-904. Enforcement of lien for clearance by municipality.**

(a) The lien provided for in § 14-54-903 may be enforced and collected in either one (1) of the following manners:

(1) At any time within eighteen (18) months after work has been done, by an action in the chancery court; or

(2) The amount of the lien provided in § 14-54-903 may be determined at a hearing before the governing body of the municipality held after thirty (30) days' written notice by certified mail to the owner of the property if the name and whereabouts of the owner are known. If the name of the owner cannot be determined, then the amount will be determined only after publication of notice of the hearing in a newspaper having a bona fide circulation in the county where the property is located for one (1) insertion per week for four (4) consecutive weeks. The determination of the governing body is subject to appeal by the property owner in the chancery court. The amount so determined at the hearing, plus ten percent (10%) penalty for collection, shall be certified by the governing body of the municipality to the tax collector of the county where the municipality is located, and placed by him on the tax books as delinquent taxes, and collected accordingly. The amount, less three percent (3%) thereof, when so collected shall be paid to the municipality by the county tax collector.

(b)(1) In any situation in which a city of the first or second class issues an order for the removal or razing of a building or house under the provisions of § 14-56-203, and such order is not complied with by the owner of the building or house and the city then removes or razes the building or house, a lien is granted and given against the real property for the cost of the removal or razing.

(2) The lien granted by this subsection shall also be enforced pursuant to the lien enforcement procedures set forth in subsection (a) of this section.

**History.** Acts 1943, No. 100, § 4; 1979, No. 339, § 1; 1983, No. 80, § 1; A.S.A. 1947, § 19-2328.

**SUBCHAPTER 10 — PLUMBERS AND PLUMBING REGULATIONS****SECTION.**

14-54-1001 — 14-54-1017. [Repealed.]

**14-54-1001 — 14-54-1017. [Repealed.]**

**Publisher's Notes.** This subchapter was repealed by Acts 1997, No. 214, § 1. The subchapter was derived from the following sources:

14-54-1001. Acts 1925, No. 166, § 11; Pope's Dig., § 9749; Acts 1941, No. 321, § 2; A.S.A. 1947, §§ 19-3702, 19-3713.

14-54-1002. Acts 1925, No. 166, § 12;

Pope's Dig., § 9750; A.S.A. 1947, § 19-3714.

14-54-1003. Acts 1925, No. 166, §§ 2 [3], 4; Pope's Dig., §§ 9741, 9742; Acts 1941, No. 321, § 3; 1945, No. 27, § 1; A.S.A. 1947, §§ 19-3704, 19-3705.

14-54-1004. Acts 1925, No. 166, §§ 1, 5; Pope's Dig., §§ 9739, 9743; Acts 1941, No.

321, §§ 1, 2, 4; 1945, No. 27, § 2; A.S.A. 1947, §§ 19-3701, 19-3702, 19-3706.

14-54-1005. Acts 1925, No. 166, § 2; Pope's Dig., § 9740; A.S.A. 1947, § 19-3703.

14-54-1006. Acts 1925, No. 166, § 5; Pope's Dig., § 9743; Acts 1941, No. 321, § 4; 1945, No. 27, § 2; A.S.A. 1947, § 19-3706.

14-54-1007. Acts 1925, No. 166, § 5; Pope's Dig., § 9743; Acts 1941, No. 321, § 4; 1945, No. 27, § 2; A.S.A. 1947, § 19-3706.

14-54-1008. Acts 1925, No. 166, § 5; 1941, No. 321, § 4; 1945, No. 27, §§ 2, 3; A.S.A. 1947, §§ 19-3706, 19-3707.

14-54-1009. Acts 1925, No. 166, § 5; Pope's Dig., § 9743; Acts 1941, No. 321, § 4; 1945, No. 27, § 2; A.S.A. 1947, § 19-3706.

14-54-1010. Acts 1925, No. 166, § 5; Pope's Dig., § 9743; Acts 1941, No. 321, § 4; 1945, No. 27, § 2; A.S.A. 1947, § 19-3706.

14-54-1011. Acts 1925, No. 166, § 5; Pope's Dig., § 9743; Acts 1941, No. 321, § 4; 1945, No. 27, § 2; A.S.A. 1947, § 19-3706.

14-54-1012. Acts 1925, No. 166, § 6; Pope's Dig., § 9744; A.S.A. 1947, § 19-3708.

14-54-1013. Acts 1925, No. 166, § 7; Pope's Dig., § 9745; A.S.A. 1947, § 19-3709.

14-54-1014. Acts 1925, No. 166, § 8; Pope's Dig., § 9746; A.S.A. 1947, § 19-3710.

14-54-1015. Acts 1925, No. 166, § 9; Pope's Dig., § 9747; A.S.A. 1947, § 19-3711.

14-54-1016. Acts 1925, No. 166, § 9; Pope's Dig., § 9747; A.S.A. 1947, § 19-3711.

14-54-1017. Acts 1925, No. 166, § 10; Pope's Dig., § 9748; A.S.A. 1947, § 19-3712.

## SUBCHAPTER 11 — REGULATION OF ANIMALS

### SECTION.

14-54-1101. Livestock running at large.

14-54-1102. Dogs running at large.

### SECTION.

14-54-1103. Taxation.

14-54-1104. Auctions.

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1899, No. 122, § 3: effective on passage.

Acts 1901, No. 172, § 2: effective on passage.

Acts 1917, No. 376, § 2: approved Mar. 24, 1917. Emergency declared.

## RESEARCH REFERENCES

**ALR.** Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals. 1 ALR 4th 994.

Construction of provisions of statute or ordinance governing occasion, time, or

manner of summary destruction of domestic animals by public authorities. 42 ALR 4th 839.

**C.J.S.** 62 C.J.S., Mun. Corp., § 212 et seq.

### 14-54-1101. Livestock running at large.

(a) Cities of the first and second class and incorporated towns are empowered to prevent the running at large within their corporate limits of cattle, horses, mules, asses, swine, sheep, goats, and other animals of the kind. These cities and towns are authorized and empowered to restrain and impound any such animals so found running at large within their corporate limits, in violation of any

ordinance passed by the cities and towns in conformity with this section.

(b)(1)(A) Whenever any person or officer of any city or incorporated town in this state under the law of this state, or under an ordinance of any city or incorporated town, shall take charge of any horse, cow, ass, sheep, goat, or hog for the purpose of impounding it, the persons so impounding the stock found to be running at large in the city or town shall at once notify the owner of the animal, if known to the person or officer, that the animal has been taken possession of.

(B) If the owner of the animal shall, within twenty-four (24) hours after being notified, appear and claim his stock, it shall be delivered to the owner.

(2)(A) If the owner of the stock is unknown to the person or officer taking up or impounding, then that person or officer shall post written notices in at least three (3) public places in the incorporated towns, and by notice in some newspaper in cities of the first and second class. This notice shall give a description of the animal, set out therein the marks, brands, and flesh marks of the animals so impounded, and call upon the owner of the animal to prove his ownership or interest therein to such person or officer having it in his possession or custody, within ten (10) days after the publication of the notice.

(B) Upon proof being made to the satisfaction of the person or officer and the payment of actual expenses incurred in the taking care of the animal, the person or officer having it in his possession shall at once deliver the animal to the owner.

(c) If the pound master, his agent or employee, or any employee of any city shall drive or entice any of the stock enumerated in this section from outside the city into the city, he shall be deemed guilty of a misdemeanor. Upon conviction, he shall be fined in any sum not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

**History.** Acts 1895, No. 137, § 1, p. 201; 1899, No. 122, §§ 1, 2, p. 198; 1901, No. 172, § 1, p. 325; C. & M. Dig., §§ 7551-7553; Acts 1921, No. 299, § 1; Pope's Dig., §§ 9625-9627; A.S.A. 1947, §§ 19-2503 — 19-2505.

## RESEARCH REFERENCES

**Ark. L. Rev.** Absolute Liability in Arkansas, 8 Ark. L. Rev. 83.

## CASE NOTES

### ANALYSIS

Construction.

Authority.

Fowls.

Liability of municipalities.

Recovery by owners.

### Construction.

Acts 1901, No. 172, relating to the impounding of stock in cities and towns, does not cover the entire subject matter of Acts 1895, No. 137, nor impliedly repeal it. *Benton v. Willis*, 76 Ark. 443, 88 S.W. 1000 (1905).



Acts 1899, No. 122, and Acts 1901, No. 172, empowering municipalities to prevent the running at large within their limits of the animals therein named impliedly repealed Acts 1895, No. 137, § 2, providing that it shall be unlawful to impound such animals when known to be the property of some persons residing outside the municipal limits. *De Queen v. Fenton*, 100 Ark. 504, 140 S.W. 716 (1911).

#### **Authority.**

Municipal corporations are empowered to provide for the impounding of certain animals found running at large within their corporate limits. *McKenzie v. Newton*, 89 Ark. 564, 117 S.W. 553 (1909).

Municipal ordinances providing for the enforcement of the statutory provisions of this section are valid police regulations. *De Queen v. Fenton*, 98 Ark. 521, 136 S.W. 945 (1911).

#### **Fowls.**

Ordinance that it shall be unlawful for any fowls to run at large within the corporate limits of a municipality is a valid exercise of the right given to municipalities to cause any nuisance to be abated.

*Merrill v. Van Buren*, 125 Ark. 248, 188 S.W. 537 (1916).

#### **Liability of Municipalities.**

Municipal corporations are not liable for the negligent or illegal acts of their officers in the wrongful impounding of animals running at large. *Gregg v. Hatcher*, 94 Ark. 54, 125 S.W. 1007 (1910).

#### **Recovery by Owners.**

The owner must pay lawful charges before the recovery of an animal will be permitted. *White v. Town of Clarksville*, 75 Ark. 340, 87 S.W. 630 (1905).

The owner may recover an animal wrongfully impounded. *Gregg v. Hatcher*, 94 Ark. 54, 125 S.W. 1007 (1910).

Where animals, the owner of which lived outside the city limits, were impounded while running at large and were sold in manner provided by ordinance when their owner refused to pay charges, the owner was not entitled to recover the animals. *Hall v. Benton*, 160 Ark. 254, 254 S.W. 530 (1923).

**Cited:** *Weeks v. City of Paragould*, 230 Ark. 908, 328 S.W.2d 81 (1959).

### **14-54-1102. Dogs running at large.**

(a) Municipal corporations shall have the power to prevent the running at large of dogs, and injuries and annoyances therefrom, and to authorize the destruction of them, when at large contrary to any prohibition to that effect.

(b)(1)(A) Municipalities may impound and destroy any dog running at large within the municipality.

(B)(i) Prior to destroying the dog, the municipality shall give the dog's owner at least five (5) days' notice of the date of the proposed destruction of the dog.

(ii) The notice shall be by certified letter, return receipt requested. Dog owners may claim their dogs at the municipal pound by reimbursing the municipality for the cost of the notice plus other costs and requirements which may be established by ordinance of the municipal governing body prior to the date set for destruction of the dogs.

(2) This subsection shall apply only in instances where the dog carries its owner's address.

**History.** Acts 1875, No. 1, § 16, p. 1; C. & M. Dig., § 7554; Pope's Dig., § 9628;

Acts 1979, No. 534, § 1; A.S.A. 1947, §§ 19-2502, 19-2502.1.



## CASE NOTES

## ANALYSIS

Authority.  
Destruction.

**Authority.**

Ordinance making it unlawful for owner of a dog living within municipal limits to permit dog to run at large and providing for a fine for its violation is

valid. *Weeks v. City of Paragould*, 230 Ark. 908, 328 S.W.2d 81 (1959).

**Destruction.**

Municipalities may provide for the killing of dogs upon which the tax has not been paid. *Gibson v. Harrison*, 69 Ark. 385, 63 S.W. 999 (1901).

**14-54-1103. Taxation.**

The city council of any municipal corporation shall have the power whenever, in their opinion, the interest of the corporation requires it, to levy and collect a tax on dogs and other domestic animals not included in the list of taxable property, for state and county purposes.

**History.** Acts 1875, No. 1, § 69, p. 1; C. & M. Dig., § 7581; Pope's Dig., § 9660; A.S.A. 1947, § 19-2501.

## CASE NOTES

**Authority.**

Ordinance imposing a yearly tax on dogs, subjecting their owners to a fine for nonpayment thereof and providing for the

killing of dogs upon which the tax is unpaid, is a valid police regulation. *Gibson v. Harrison*, 69 Ark. 385, 63 S.W. 999 (1901).

**14-54-1104. Auctions.**

Municipal corporations shall have power to regulate or prohibit the sale of all horses or other domestic animals at auctions in the streets, alleys, or highways.

**History.** Acts 1875, No. 1, § 17, p. 1; § 7532; Pope's Dig., § 9601; A.S.A. 1947, 1917, No. 376, § 1, p. 1810; C. & M. Dig., § 19-2329.

**SUBCHAPTER 12 — MILK PRODUCTION AND SALE**

## SECTION.

14-54-1201. Authority to regulate.

14-54-1202. Form of ordinance.

**RESEARCH REFERENCES**

**C.J.S.** 62 C.J.S., Mun. Corp., § 244.

**14-54-1201. Authority to regulate.**

Municipalities are authorized to regulate, in accordance with the terms of the 1939 edition of the United States Public Health Service milk ordinance, the production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products sold for ultimate consumption within municipalities.

**History.** Acts 1935, No. 121, § 1; Pope's Dig., § 9972; Acts 1939, No. 131, § 1; A.S.A. 1947, § 19-3401.

**14-54-1202. Form of ordinance.**

Authority for the regulation authorized in § 14-54-1201 may be had by the passage of an ordinance in the following form:

"An ordinance to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, regrading, and sale of milk and milk products; the inspection of dairy herds, dairies, and milk plants; the issuing and revocation of permits to milk producers and distributors; the placarding of restaurants and other establishments serving milk or milk products; and the fixing of penalties.

"The city of . . . . . ordains:

"Section 1. The production, transportation, processing, handling, sampling, examination, grading, labeling, regrading, and sale of all milk and milk products sold for ultimate consumption within the city of . . . . ., or its police jurisdiction, the inspection of dairy herds, dairies, and milk plants, the issuing and revocation of permits to milk producers and distributors, the placarding of restaurants and other establishments serving milk or milk products, and the fixing of penalties, shall be regulated in accordance with the terms of the 1939 edition of the United States Public Health Service Milk Ordinance, a certified copy of which shall be on file in the office of the city clerk: Provided, That the blank spaces following the words "city of" in said Public Health Service Milk Ordinance shall be understood to refer to the city of . . . . .; Provided further, That in section 8 of said Public Health Service Milk Ordinance the . . . . . alternative wording shall apply: Provided further, That sections 16 and 17 of said Public Health Service Milk Ordinance shall be replaced, respectively, by sections 2 and 3 below.

"Section 2. Any person, firm, or corporation violating any provision of this ordinance shall upon conviction be punished by . . . . .

"Section 3. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed; and this ordinance shall take effect . . . . . upon its adoption and publication."

**History.** Acts 1935, No. 121, § 2; Pope's Dig., § 9973; Acts 1939, No. 131, § 2; A.S.A. 1947, § 19-3402.

## SUBCHAPTER 13 — PUBLIC RECREATION AND PLAYGROUNDS

### SECTION.

14-54-1301. Authority to operate.

14-54-1302. Operation of programs generally.

14-54-1303. State aid not used.

14-54-1304. Use of school funds.

### SECTION.

14-54-1305. Gifts and bequests.

14-54-1306. Property used for activities.

14-54-1307. Use of school facilities.

14-54-1308. Directors and instructors.

**Publisher's Notes.** Acts 1941, No. 291, is also codified as § 6-21-501 et seq. and § 14-16-201 et seq.

**Cross References.** Land dedicated for park purposes, cancellation of delinquent taxes, § 26-37-212.

Parks annexed to city, § 14-40-204.

Title to parks not acquired by adverse possession, § 22-1-201.

**Effective Dates.** Acts 1941, No. 291, § 6: approved Mar. 26, 1941. Emergency clause provided: "This act being necessary for the promotion of an adequate National Defense and an able-bodied citizenry, an emergency is declared to exist and the same shall take effect and be in force from and after its passage."

## RESEARCH REFERENCES

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 202.

**C.J.S.** 62 C.J.S., Mun. Corp., § 211.  
64 C.J.S., Mun. Corp., §§ 1818-1823.

### 14-54-1301. Authority to operate.

(a) Any city or town, or any board thereof, may:

(1) Operate a program of public recreation and playgrounds;

(2) Acquire, equip, and maintain land, buildings, or other recreational facilities; and

(3) Expend funds for the operation of the program pursuant to the provisions of this subchapter.

(b) The provisions of this subchapter shall not apply to §§ 17-22-201 — 17-22-204, 17-22-301 — 17-22-303, and 17-22-305.

**History.** Acts 1941, No. 291, § 1; A.S.A. 1947, § 19-3601.

**Publisher's Notes.** Sections §§ 17-19-201 — 17-19-204, 17-19-301, 17-19-302, 17-19-303, and 17-19-305, referred to in

this section, have been renumbered as §§ 17-22-201 — 17-22-204, 17-22-301, 17-22-302, 17-22-303, and 17-22-305, respectively.

## CASE NOTES

### Swimming Pools.

Evidence was sufficient to establish that swimming pool operated by municipality was operated in governmental capacity, and not in a proprietary capacity for profit; hence city was not liable for drowning of child in the pool. *Handley v. City of Hope*, 137 F. Supp. 442 (W.D. Ark.),

appeal dismissed, 239 F.2d 647 (8th Cir. 1956).

Where municipal swimming pool was being operated in municipality's governmental capacity, plaintiff could not avoid governmental immunity in action against municipality based on drowning of child in pool by alleging an action in contract

where the action was clearly in tort. *Handley v. City of Hope*, 137 F. Supp. 442 (W.D. Ark.), appeal dismissed, 239 F.2d 647 (8th Cir. 1956).

Where evidence showed that municipality owned property on which swimming pool was constructed and leased the pool to a boys' club and club operated the pool and received all revenues therefrom, a minor who was injured while diving where depth of pool was allegedly unmarked could not sue the municipality in tort since the municipality, in owning pool, was acting in governmental capacity and was immune from tort liability to user of pool, there being no liability insurance

involved. *Cabbiness v. City of North Little Rock*, 228 Ark. 356, 307 S.W.2d 529 (1957).

Where complaint was based on tort liability and damages were requested for personal injuries, allegations therein that municipality constructed and leased a nuisance (swimming pool) to boys' club, which maintained the pool, were immaterial, since proper procedure for person aggrieved by nuisance is to bring abatement action. *Cabbiness v. City of North Little Rock*, 228 Ark. 356, 307 S.W.2d 529 (1957).

**Cited:** *Kendall v. Henderson*, 238 Ark. 832, 384 S.W.2d 954 (1964).

### 14-54-1302. Operation of programs generally.

(a) Any city or town, or any board thereof, may operate a program of public recreation and playgrounds independently; they may cooperate in its conduct and in any manner in which they may mutually agree, including with counties or school districts; or they may delegate the cooperation of the program to a recreation board created by one (1) or more of them and appropriate money voted for this purpose to the board.

(b) In the case of school districts, the right to enter into such agreements with any other public corporation, board, or body or the right to delegate power to a board for operating a program of recreation shall be authorized only by a majority vote cast at an annual school election.

**History.** Acts 1941, No. 291, § 2; A.S.A. 1947, § 19-3602.

**Cross References.** Operation and

management of parks and recreation programs, § 14-269-201 et seq., § 14-269-301 et seq.

### 14-54-1303. State aid not used.

State aid shall not be used for recreational purposes as provided in this subchapter.

**History.** Acts 1941, No. 291, § 2; A.S.A. 1947, § 19-3602.

### 14-54-1304. Use of school funds.

In all cases where school funds are utilized for programs under this subchapter, the State Board of Education shall prepare or cause to be, prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry out the provisions of this subchapter.

**History.** Acts 1941, No. 291, § 4; A.S.A. 1947, § 19-3604.



**14-54-1305. Gifts and bequests.**

Any corporation, board, or body designated as given charge of a recreation program shall have authority to accept gifts and bequests for the benefit of the recreational service.

**History.** Acts 1941, No. 291, § 3;  
A.S.A. 1947, § 19-3603.

**14-54-1306. Property used for activities.**

Any corporation, board, or body designated as given charge of a recreation program is authorized to conduct its activities on:

- (1) Property under its custody and management;
- (2) Other public property under the custody of any other public organization, body, or board, with the consent of the corporations, bodies, or boards; and
- (3) Private property, with the consent of its owners.

**History.** Acts 1941, No. 291, § 3;  
A.S.A. 1947, § 19-3603.

**14-54-1307. Use of school facilities.**

(a) The facilities of any school district operating a recreation program pursuant to the provisions of this subchapter shall be used primarily for the purpose of conducting the regular school curriculum and related activities, and the use of school facilities for recreation purposes authorized by this subchapter shall be secondary.

(b) In all cases where school property is utilized for programs under this subchapter, the State Board of Education shall prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry out the provisions of this subchapter.

**History.** Acts 1941, No. 291, §§ 4, 5;  
A.S.A. 1947, §§ 19-3604, 19-3605.

**14-54-1308. Directors and instructors.**

(a) Any corporation, board, or body designated as given charge of a recreation program shall have authority to employ directors and instructors of recreational work.

(b) In all cases where school funds or property are utilized for programs under this subchapter, the State Board of Education shall establish minimum qualifications of local recreational directors and instructors.

**History.** Acts 1941, No. 291, §§ 3, 4;  
A.S.A. 1947, §§ 19-3603, 19-3604.

SUBCHAPTER 14 — MISCELLANEOUS REGULATIONS

SECTION.	SECTION.
14-54-1401. Amusement places.	14-54-1407. Transient vendors.
14-54-1402. Business on Sunday.	14-54-1408. Vagrants, etc.
14-54-1403. Carriages for hire.	14-54-1409. Rent control preemption.
14-54-1404. Livery stables.	14-54-1410. Operation of golf carts on city streets.
14-54-1405. Public exhibitions and shows.	14-54-1411. Firearms and ammunition.
14-54-1406. Traditional barber pole.	

**Preambles.** Acts 1977, No. 400 contained a preamble which read: "Whereas, the use of barber poles as advertising signs has become an American tradition; and

"Whereas, the traditional candy-striped barber pole is neither an eye sore nor a traffic hazard; and

"Whereas, some municipalities are attempting to prohibit the use of barber poles by the barber shops in the State;

"Now, therefore...."

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1917, No. 376, § 2: approved Mar. 24, 1917. Emergency declared.

Acts 1917, No. 397, § 2: approved Mar. 28, 1917. Emergency declared.

Acts 1957, No. 367, § 6: Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly of the State of Arkansas that there has been considerable controversy in recent months concerning the operation of businesses on Sunday, that much confusion exists in regard to the present status of certain state laws and city ordinances, and this act will clarify and improve this undesirable situation. Therefore an emergency is hereby declared to exist and this Act being necessary for the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 62 C.J.S., Mun. Corp., § 211 et seq.

14-54-1401. Amusement places.

All municipal corporations in this state shall have authority and power to license, regulate, tax, prohibit, or suppress billiard halls, pool rooms, bowling alleys, box-ball alleys, and other similar places of amusement kept for hire.

**History.** Acts 1917, No. 397, § 1; C. & M. Dig., § 7530; Pope's Dig., § 9599; A.S.A. 1947, § 19-2330.

**14-54-1402. Business on Sunday.**

(a) The city council or board of managers of any city or incorporated town in this state shall have the authority, by ordinance, to regulate the operation of businesses within their cities or towns on Sunday.

(b) The provisions of this section shall not in any manner amend, repeal, or otherwise affect the provisions of § 5-60-119 permitting motion picture shows on Sundays.

**History.** Acts 1957, No. 367, §§ 1, 3; A.S.A. 1947, §§ 19-2335, 19-2336.

**RESEARCH REFERENCES**

**UALR L.J.** Note, Constitutional Law — Law is Declared Unconstitutionally Due Process — Arkansas' Sunday Closing Vague, 6 UALR L.J. 305.

**CASE NOTES**

ANALYSIS

Construction.  
Authority.

**Construction.**

This section is sufficiently broad and definite to grant a municipality full and complete authority to enact an ordinance prohibiting the Sunday sale of all but certain items. *Green Star Supermarket, Inc. v. Stacy*, 242 Ark. 54, 411 S.W.2d 871 (1967).

**Authority.**

Where, prior to enactment of this section, ordinance had been enacted prohib-

iting certain business on Sunday under provisions of former statute, the fact that the statute was repealed and this section enacted did not invalidate the prior ordinance so that a new ordinance would be required under the provisions of this section. *Hickinbotham v. Williams*, 227 Ark. 1102, 303 S.W.2d 563, cert. denied, 353 U.S. 961, 77 S. Ct. 867, 1 L. Ed. 2d 909 (1957).

**14-54-1403. Carriages for hire.**

Municipal corporations shall have power to regulate all carts, wagons, drays, hackney coaches, omnibuses, ferries, and every description of carriages which may be kept for hire.

**History.** Acts 1875, No. 1, § 17, p. 1; Pope's Dig., § 9601; A.S.A. 1947, § 19-1917, No. 376, § 1; C. & M. Dig., § 7532; 2329.

**CASE NOTES**

ANALYSIS

Authority.  
Licenses.

**Authority.**

Municipal corporations have the exclusive right to regulate motor vehicles used

for public hire. *Willis v. City of Ft. Smith*, 121 Ark. 606, 182 S.W. 275 (1916).

**Licenses.**

The power to regulate drays, etc., includes the power to license as a means of regulation, and to require a fee as the cost of license; however, such a fee must be

reasonable, and not imposed for the sole or main purpose of revenue. *Russellville v. White*, 41 Ark. 485 (1883); *Fort Smith v. Ayers*, 43 Ark. 82 (1884); *Brewster v. City of Pine Bluff*, 70 Ark. 28, 65 S.W. 934 (1901).

Ordinance imposing a license fee on persons operating motor vehicles for delivery was held invalid as applied to a retail grocer delivering purchases to his customers. *Nesler v. City of Paragould*, 187 Ark. 177, 58 S.W.2d 677 (1933).

This section is a regulatory and not a

revenue statute; the power to regulate includes the power to license as a means of regulating, but the license fee must be reasonable and not imposed for the sole or main purpose of raising revenue. *Talley v. City of Blytheville*, 204 Ark. 745, 164 S.W.2d 900 (1942).

Ordinance imposing an occupation tax to operate a taxicab service was held a revenue measure and not authorized by this section. *Talley v. City of Blytheville*, 204 Ark. 745, 164 S.W.2d 900 (1942).

### 14-54-1404. Livery stables.

Municipal corporations shall have power to regulate all livery stables.

**History.** Acts 1875, No. 1, § 17, p. 1; Pope's Dig., § 9601; A.S.A. 1947, § 19-1917, No. 376, § 1; C. & M. Dig., § 7532; 2329.

#### CASE NOTES

##### Authority.

Municipalities may exclude livery stables from a certain defined area. *City of Little Rock v. Reinman*, 107 Ark. 174, 155

S.W. 105 (1913), *aff'd sub nom, Reinman v. City of Little Rock*, 237 U.S. 171, 35 S. Ct. 511, 59 L. Ed. 900 (1915).

### 14-54-1405. Public exhibitions and shows.

(a) Municipal corporations shall have power to license, regulate, or prohibit all theatrical exhibitions, public shows, and exhibitions of whatever name or nature.

(b) Lectures on science, historical, or literary subjects shall not be included within the provisions of this section.

**History.** Acts 1875, No. 1, § 17, p. 1; Pope's Dig., § 9601; A.S.A. 1947, § 19-1917, No. 376, § 1; C. & M. Dig., § 7532; 2329.

#### CASE NOTES

##### Movie Theaters.

The business of operating moving picture shows is a lawful business and it may not be suppressed or unreasonably burdened by license fees or taxes that are unreasonably high or discriminatory. *City of Morrilton v. Malco Theatres, Inc.*, 202 Ark. 100, 149 S.W.2d 55 (1941).

Power of municipality extends only to right to regulate reasonably and it does not include the power to prohibit anyone from operating more than one moving picture show. *City of Morrilton v. Malco Theatres, Inc.*, 202 Ark. 100, 149 S.W.2d 55 (1941).



**14-54-1406. Traditional barber pole.**

No municipality, by ordinance or otherwise, may prohibit the placement or the maintenance and use of the traditional barber pole on the premises of barbershops within this state, whether internally or externally lighted or not lighted, and whether rotating or stationary.

**History.** Acts 1977, No. 400, § 1; A.S.A. 1947, § 19-2355.

**14-54-1407. Transient vendors.**

(a) All municipalities shall have power to define, license, regulate, or tax transient and itinerant vendors, or transient dealers in merchandise, or transient dealers in horses and mules.

(b) No one who conducts the same business in the same municipality for six (6) consecutive months shall be classed as a transient.

**History.** Acts 1875, No. 1, § 17, p. 1; Pope's Dig., § 9601; A.S.A. 1947, § 19-1917, No. 376, § 1; C. & M. Dig., § 7532; 2329.

**14-54-1408. Vagrants, etc.**

The city council shall have power to provide that all vagrants, common street beggars, common prostitutes, and persons disturbing the peace of the city shall, on conviction, be punished by fine or imprisonment not exceeding thirty (30) days.

**History.** Acts 1875, No. 1, § 9, p. 1; C. & M. Dig., § 7599; Pope's Dig., § 9685; A.S.A. 1947, § 19-2333.

**CASE NOTES****Prostitutes.**

Ordinance making it a misdemeanor for any male person over 14 years of age to walk the streets at any time with a female having the reputation of a prostitute was held invalid. *Coker v. City of Ft. Smith*, 162 Ark. 567, 258 S.W. 388 (1924).

Municipal court was held to have jurisdiction to commit to the state farm for women a woman who pleaded guilty to charges of habitual prostitution. *Adams v. Pace*, 193 Ark. 1020, 104 S.W.2d 212 (1937).

**14-54-1409. Rent control preemption.**

(a) As used in this section, "local governmental unit" means a political subdivision of this state, including, but not limited to, a county, city, village, or township, if the political subdivision provides local government services for residents in a geographically limited area of this state as its primary purpose and has the power to act primarily on behalf of that area.

(b) A local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the

amount of rent charged for leasing private residential or commercial property.

(c) This section does not impair the right of any local governmental unit to manage and control residential property in which the local governmental unit has a property interest.

**History.** Acts 1993, No. 545, §§ 1-3.

**Publisher's Notes.** Acts 1993, No. 545,  
§§ 1-3 are also codified as § 14-16-601.

#### **14-54-1410. Operation of golf carts on city streets.**

(a) It shall be within the municipal affairs and authority of any municipality in the State of Arkansas to authorize, by municipal ordinance, any owner of a golf cart to operate the golf cart upon the city streets of the municipality; provided, however, operation shall not be authorized on city streets which are also designated as federal or state highways or as a county road.

(b) The municipality may authorize the operation of golf carts on city streets only from the owner's place of residence to the golf course and to return from the golf course to the owner's residence.

(c) When authorized by the municipality to operate on the city streets and limited to the circumstances and provisions of this section, there shall be no motor vehicle registration or license necessary to operate the golf cart on the public street.

(d) The term "municipality" as used in this section means any city of the first class, city of the second class, or an incorporated town.

**History.** Acts 1993, No. 976, § 1.

licensing of motor vehicles generally,

**Cross References.** Registration and § 27-14-101 et seq.

#### **14-54-1411. Firearms and ammunition.**

(a) As used in this section, "local unit of government" means a city, town, or county.

(b) A local unit of government shall not enact any ordinance or regulation pertaining to, or regulate in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law. This shall not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm.

(c) Notwithstanding subsection (b) of this section, the governing body of a local unit of government may, following the proclamation by the Governor of a state of emergency, enact an emergency ordinance regulating the transfer, transportation, or carrying of firearms, or components of firearms. Such emergency ordinance shall not be effective for a period of more than twenty (20) days and shall be enacted by a two-thirds ( $\frac{2}{3}$ ) majority of the governing body.

**History.** Acts 1993, No. 1100, §§ 1-3. 1100, §§ 1-3, are also codified as § 14-16-504.  
**Publisher's Notes.** Acts 1993, No. 504.

## RESEARCH REFERENCES

**UALR L.J.** Legislative Survey, Civil Liberties, 16 UALR L.J. 73.

## CHAPTER 55

## ORDINANCES OF MUNICIPALITIES

### SUBCHAPTER

1. GENERAL PROVISIONS.
2. PROCEDURES FOR ADOPTION.
3. REFERRAL TO ELECTORS.
4. EFFECT OF PASSAGE.
5. PRESCRIBING OF PENALTIES.
6. ENFORCEMENT AND REMEDIES.
7. CODIFICATION OF ORDINANCES.

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## RESEARCH REFERENCES

**ALR.** Ordinance prohibiting picketing, parading, demonstrating or appearing in public while masked or disguised. 2 ALR 4th 1241.

Ordinance prohibiting use of obscene language in public. 2 ALR 4th 1331.

Ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 ALR 4th 922.

Ordinances prohibiting profanity or profane swearing or cursing. 5 ALR 4th 956.

Ordinances requiring sex-oriented businesses to obtain operating licenses. 8 ALR 4th 130.

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance. 11 ALR 4th 399.

Ordinance restricting number of unrelated persons who can live together in residential zone. 12 ALR 4th 238.

Ordinance protecting landmarks. 18 ALR 4th 990.

Ordinances prohibiting or regulating advertising of intoxicating liquors. 20 ALR 4th 600.

Ordinance requiring compliance with

housing standards before rent increase or possession by new tenant. 20 ALR 4th 1246.

Ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 ALR 4th 668.

Validity of state or municipal tax or license fee upon occupation of practicing law. 50 ALR 4th 467.

Validity of local regulation of hazardous waste. 67 ALR 4th 822.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified contractors a percentage preference in determining lowest bid. 89 ALR 4th 587.

Validity of state or local government regulation requiring private school to report attendance and similar information to government (post-Yoder cases). 8 ALR 5th 875.

Validity of ordinances restricting location of "adult entertainment" or sex-oriented businesses. 10 ALR 5th 538.

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 343 et seq.

**C.J.S.** 62 C.J.S., Mun. Corp., § 411 et seq.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

14-55-101. Authority to enact.

14-55-102. Purposes generally.

### SECTION.

14-55-103. Duty to enact.

**Effective Dates.** Acts 1875, No. 1,  
§ 95: effective on passage.

## CASE NOTES

### In General.

The general powers conferred in this subchapter do not enlarge the powers con-

ferred in § 14-54-103. *Tuck v. Waldron*, 31 Ark. 462 (1876).

### 14-55-101. Authority to enact.

Municipal corporations shall have the power to make and publish from time to time bylaws or ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers or duties conferred by the provisions of this subtitle.

**History.** Acts 1875, No. 1, § 22, p. 1; C. & M. Dig., § 7493; Pope's Dig., § 9542; A.S.A. 1947, § 19-2401.

## CASE NOTES

### ANALYSIS

Evidence.

No authority to regulate.

Publication of ordinances.

Subjects of regulation.

Sunday laws.

Violations.

### Evidence.

There is a presumption in favor of a municipal ordinance, and one who challenges its validity alleging it to be arbitrary, unreasonable, or discriminatory should make it appear so by clear and satisfactory evidence. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

### No Authority to Regulate.

Incorporated town could not require jeweler to pay license for doing business. *Town of Mena v. Smith*, 64 Ark. 363, 42 S.W. 831 (1897).

Municipal corporations were held not authorized to regulate hotels. *Bragg v.*

*Adams*, 180 Ark. 582, 21 S.W.2d 950 (1929).

### Publication of Ordinances.

The burden of showing that there was no publication of ordinance is on the person accused who interposes that defense. *City of North Little Rock v. Kirk*, 173 Ark. 554, 292 S.W. 993 (1927).

Section 14-55-206(a)(1)(A), read in conjunction with this section, clearly gives only the municipality the power to publish ordinances. *Phillips v. City of Eureka Springs*, 312 Ark. 57, 847 S.W.2d 21 (1993).

### Subjects of Regulation.

Theaters are proper subjects for police regulation, and an ordinance regulating the construction of moving picture theaters alone is not void because it does not apply to other theaters or places of amusement. *City of N. Little Rock v. Rose*, 136 Ark. 298, 206 S.W. 449 (1918).



**Sunday Laws.**

Ordinance that prohibited the operation of grocery stores and meat markets on Sunday was held constitutional. *Hickinbotham v. Williams*, 227 Ark. 126, 296 S.W.2d 897 (1956), cert. denied, 353 U.S. 961, 77 S. Ct. 867, 1 L. Ed. 909 (1957).

**Violations.**

Where violation of ordinance depended on whether two or more neighbors had filed a written petition, it was in conflict with Ark. Const., Art. 2, § 18, relating to privileges and immunities of citizens. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

**14-55-102. Purposes generally.**

Municipal corporations shall have power to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof.

**History.** Acts 1875, No. 1, § 22, p. 1; C. & M. Dig., § 7494; Pope's Dig., § 9543; A.S.A. 1947, § 19-2401.

**CASE NOTES****ANALYSIS**

Health.  
Morals, etc.  
Prosperity.  
Safety.

**Health.**

Ordinance providing that any physician who, for the purpose of procuring patients, employed any solicitor, capper, or drummer or subsidized any hotel or boarding house shall be deemed guilty of a misdemeanor was valid. *Burrow v. City of Hot Springs*, 85 Ark. 396, 108 S.W. 823 (1908).

Ordinance granting exclusive privilege of removing deposits from unsewered privies within municipal limits is a valid exercise of the police power if the ordinance is reasonable in its terms and designed solely for protection of public health. *Dreyfus v. Boone*, 88 Ark. 353, 114 S.W. 718 (1908).

Municipalities may regulate the sale of milk and fresh meats by requiring that they be inspected before sale. *Dreyfus v. Boone*, 88 Ark. 353, 114 S.W. 718 (1908); *Carpenter v. City of Little Rock*, 101 Ark. 238, 142 S.W. 162 (1911).

By ordinance, municipality may provide for erection of municipal hospital. *Cumnock v. City of Little Rock*, 154 Ark. 471, 243 S.W. 57 (1922).

While municipal corporations, under

general welfare clause, may require those who pursue avocation of plumbing to perform their work in such manner as not to endanger public health and safety, they have no power to prevent anyone from engaging in that occupation or placing restriction upon them so long as their work is not done in a manner detrimental to public welfare. *Replogle v. City of Little Rock*, 166 Ark. 617, 267 S.W. 353 (1924).

Municipality is authorized to provide for inspection of all plumbing work done in the municipality and to impose a fee upon each person engaged in the trade for the purpose of defraying the expense of the inspection. *Shaw v. Conway*, 179 Ark. 266, 15 S.W.2d 411 (1929).

State's power to legislate in protection of public health has been granted and delegated to municipalities. *City of Little Rock v. Smith*, 204 Ark. 692, 163 S.W.2d 705 (1942).

Ordinance providing that whenever a person who, upon examination, is found to be infected with a venereal disease in a communicable state fails to take treatment adequate for the protection of public health, municipal health officer may commit that person to a hospital or other place within the state for treatment was held not unconstitutional on ground the regulations were unreasonable. *City of Little Rock v. Smith*, 204 Ark. 692, 163 S.W.2d 705 (1942).

Municipality may regulate location of livery stables, but this regulation must not be arbitrary or unjust. *City of Springdale v. Chandler*, 222 Ark. 167, 257 S.W.2d 934 (1953).

### **Morals, Etc.**

Municipalities may, by ordinance, prohibit intoxication on streets and public places. *Dewitt v. La Cotts*, 76 Ark. 250, 88 S.W. 877 (1905).

Ordinance appropriating money to welfare association organized to help poor and unfortunate of municipality is valid. *Bourland v. Pollock*, 157 Ark. 538, 249 S.W. 360 (1923).

Municipality has no authority to adopt ordinance providing that the mayor or chief of police may summon any person before such officer to answer whether he knows of any violations of the criminal laws of the city and to impose a fine for refusal to answer the question. *Waldrum v. Wilbanks*, 171 Ark. 321, 283 S.W. 979 (1926).

Ordinance relating to storage of motor vehicles abandoned on streets is valid. *Means v. American Equitable Assurance Co.*, 186 Ark. 83, 52 S.W.2d 737 (1932).

Provisions authorizing municipality to regulate construction, alteration, and repair of buildings by passing ordinances for the general welfare was held not to authorize ordinance establishing building and setback lines. *City of Stuttgart v. Strait*, 212 Ark. 126, 205 S.W.2d 35 (1947).

Ordinance requiring places of business in municipality to remain closed from midnight to four a.m. whose purpose was to prevent youths from driving noisily about the streets during this period was in excess of municipality's delegated authority relative to enactment of ordinances, since this purpose could have been accomplished by directly prohibiting the objectionable conduct. *Dyess v. Williams*, 247 Ark. 155, 444 S.W.2d 701 (1969).

### **Prosperity.**

Municipality did not abuse its discretion in enacting ordinance for establishing of parking meters in front of business even though business was deprived of suitable loading and unloading space. *City of Marianna v. Gray*, 220 Ark. 468, 248 S.W.2d 379 (1952), *aff'd*, 222 Ark. 947, 265 S.W.2d 496 (1954).

### **Safety.**

Municipality could not bind itself to pay for levee. *Newport v. Batesville & B. Ry.*, 58 Ark. 270, 24 S.W. 427 (1893).

Power of municipality to prohibit, by ordinance, filling stations and other service appliances on streets, alleys, or sidewalks within the fire limits of the municipality is not limited by this section. *Sander v. City of Blytheville*, 164 Ark. 434, 262 S.W. 23 (1924).

Municipal council has no statutory power to permit permanent operation and maintenance of a filling station in the street, and such a license, if granted, would confer no vested or irrevocable right to operate a filling station. *Sander v. City of Blytheville*, 164 Ark. 434, 262 S.W. 23 (1924).

Municipality has power and duty to make reasonable provision for the safety of persons and property using its streets by the enactment of ordinances, resolutions, or bylaws looking to that end, and the municipal authorities have a wide discretion on these matters. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

Resolution authorizing construction of dividing curb along center of boulevard, making it a four-lane highway and permitting crossings only at street intersections, was held not arbitrary, unreasonable, or discriminatory against owner of tourist camp in center of a long block, whose prospective customers would be prevented from turning to the left into his property, but would have to drive to the next intersection and return. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

Whether a community shall be invaded by construction and operation of a filling station is a matter that may be regulated, even though the station, *per se*, is not a nuisance. *Van Hovenberg v. Holman*, 201 Ark. 370, 144 S.W.2d 718 (1940).

Prohibition against erecting and operating filling stations without permission is a regulation within municipality's police power. *Van Hovenberg v. Holman*, 201 Ark. 370, 144 S.W.2d 718 (1940).

Municipalities have power to pass ordinances regulating use of streets by trucks. *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955).

Statutory provisions relating to motor vehicles did not repeal or supercede this

section or effect the authority of municipality to regulate use of streets by trucks.

House v. City of Texarkana, 225 Ark. 162, 279 S.W.2d 831 (1955).

### 14-55-103. Duty to enact.

It is the duty of municipal corporations to publish such bylaws and ordinances as shall be necessary to:

(1) Secure such corporations and their inhabitants against injuries by fire, thieves, robbers, burglars, and other persons violating the public peace;

(2) Suppress riots, gambling, and indecent and disorderly conduct; and

(3) Punish all lewd and lascivious behavior in the streets and other public places.

**History.** Acts 1875, No. 1, § 22, p. 1; C. & M. Dig., § 7494; Pope's Dig., § 9543; A.S.A. 1947, § 19-2401.

## CASE NOTES

### Vagrancy.

The provisions of Ark. Const., Art. 7, § 28, relating to jurisdiction of the county courts, did not abrogate the jurisdiction of

municipal courts to try and punish vagrancy. *Brizzolari v. State*, 37 Ark. 364 (1881).

## SUBCHAPTER 2 — PROCEDURES FOR ADOPTION

### SECTION.

14-55-201. Only one subject.

14-55-202. Reading requirement.

14-55-203. Voting requirements for passage.

14-55-204. Approval of appropriations.

### SECTION.

14-55-205. Recording and authentication.

14-55-206. Publishing or posting requirements.

14-55-207. Adoption of technical codes by reference.

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1949, No. 36, § 3: Feb. 2, 1949. Emergency clause provided: "Whereas, the proper recording of municipal ordinances is necessary for the enforcement of municipal laws, and whereas, this Act is necessary for the protection of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

Acts 1949, No. 267, § 5: Mar. 10, 1949.

Acts 1993, No. 295, § 6: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of the state of Arkansas pertaining to notice of the adoption of ordinances by municipalities are, in some

cases, inconsistent, conflicting and confusing; that, following the adoption, in 1987, of Title 19, Chapter 9, Subchapter 6 of the Arkansas Code of 1987 Annotated (requiring published notice and public hearing prior to the adoption of ordinances authorizing revenue bonds), prior laws requiring similar notice with respect to municipal waterworks revenue bonds are redundant; and that it is essential that there be no confusion regarding the conduct of governmental proceedings by Arkansas municipalities. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."



**14-55-201. Only one subject.**

No bylaw or ordinance shall contain more than one (1) subject, which shall be clearly expressed in its title.

**History.** Acts 1875, No. 1, § 86, p. 1; C. & M. Dig., § 7502; Pope's Dig., § 9562; A.S.A. 1947, § 19-2402.

**CASE NOTES****ANALYSIS**

Stipulations.  
Titles.

**Stipulations.**

Where parties stipulated that ordinance was legally submitted to vote of qualified electors, they were bound by their stipulation and could not assert that it was invalid as containing more than one subject. *Rooker v. City of Little Rock*, 234 Ark. 372, 352 S.W.2d 172 (1961).

**Titles.**

Resolution of municipal counsel was not void for failure to contain a proper title as required by this section where it was apparent that one subject was clearly expressed in its title. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

**Cited:** *City of Batesville v. Ball*, 100 Ark. 496, 140 S.W. 712 (1911).

**14-55-202. Reading requirement.**

All bylaws and ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days unless two-thirds ( $\frac{2}{3}$ ) of the members composing the municipal council shall dispense with the rule.

**History.** Acts 1875, No. 1, § 86, p. 1; C. & M. Dig., § 7502; Pope's Dig., § 9562; A.S.A. 1947, § 19-2402.

**CASE NOTES****ANALYSIS**

Applicability.  
Resolutions.  
Suspension of rules.

**Applicability.**

This section has no applicability to ordinance entering into a special contract such as an electric light franchise. *Barnett v. Mays*, 153 Ark. 1, 239 S.W. 379 (1922).

This section has no applicability to ordinance entering into a contract, such as electric light and water franchise, as the fact that a franchise created by ordinance runs for a long period of time does not make ordinance creating it general or permanent. *City of El Dorado v. Citizens' Light & Power Co.*, 158 Ark. 550, 250 S.W. 882 (1923).

**Resolutions.**

Provisions of this section regarding reading of ordinances on three separate days apply only to bylaws and ordinances of a general or permanent nature; it does not specify resolutions and would not apply to a resolution held to be not an ordinance and which could not be construed to be of a general or permanent nature. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

**Suspension of Rules.**

Where record of passage of ordinance fails to show that ordinance was passed under suspension of the rules, it may be amended to show that fact at a subsequent meeting of the municipal council if all the members present at the latter



meeting were present when the ordinance was passed. *White v. Town of Clarksville*, 75 Ark. 340, 87 S.W. 630 (1905).

Ordinance that was read three times and passed at same meeting is not invalid because record does not show number of aldermen voting to suspend the rule, if it does show that two-thirds of the councilmen were present and voted to suspend the rule. *McLeod v. Purnell*, 164 Ark. 596, 262 S.W. 682 (1924).

Adoption of resolution by unanimous vote of all members of municipal council dispenses with statute requirement. *Young v. Gurdon*, 169 Ark. 399, 275 S.W. 890 (1925).

Adoption of resolution by unanimous vote of all members of municipal council dispenses with requirement of this section for the reading of bylaws and ordinances on three different days. *City of El Dorado*

*v. Jacobs*, 174 Ark. 98, 294 S.W. 411 (1927).

Law requires ordinances to be read fully and distinctly on three different days, unless two-thirds of the members composing the municipal council shall dispense with the rule; and when rules have been suspended, an ordinance, unlike a bill in the legislature, need not be read again. *Vaughan v. Searcy*, 199 Ark. 585, 135 S.W.2d 319 (1940).

Legal effect of unanimous action by municipal council is to dispense with the need for formally suspending the rules; therefore an ordinance is not invalid for failure to read the proposed measure a third time. *Holman v. Dierks*, 217 Ark. 677, 233 S.W.2d 392 (1950).

**Cited:** *City of Batesville v. Ball*, 100 Ark. 496, 140 S.W. 712 (1911).

### 14-55-203. Voting requirements for passage.

(a) On the passage of every bylaw, ordinance, resolution, or order to enter into a contract by the council of any municipal corporation, the yeas and nays shall be called and recorded.

(b) To pass any bylaw, ordinance, resolution, or order, a concurrence of a majority of a whole number of members elected to the council shall be required.

**History.** Acts 1875, No. 1, § 29, p. 1; C. & M. Dig., § 7528; Pope's Dig., § 9588; A.S.A. 1947, § 19-2403.

### CASE NOTES

#### ANALYSIS

Contracts.  
Majority.  
Mayors.  
Passage.  
Recording.

#### Contracts.

By keeping and using goods purchased under an unauthorized contract, municipality is estopped to deny validity of purchase by reason of informalities in execution of contract. *City of Ft. Smith v. United States Rubber Co.*, 184 Ark. 588, 42 S.W.2d 1004 (1931).

Contract illegally entered into or entered into without authority by agent or officer of a municipal corporation may be ratified and rendered binding upon the

municipal corporation by affirmative action on its part, or some negative action, which would amount to an approval of the contract. *Day v. Malvern*, 195 Ark. 804, 114 S.W.2d 459 (1938).

Oral contract between property owner and mayor on behalf of municipality by which municipality agreed to lower lot to street level in consideration of bed of gravel thereon needed for street construction was held ratified by municipality by its affirmative action in paying carpenter and helper to move house to another part of lot and in using gravel removed from the lot. *Day v. Malvern*, 195 Ark. 804, 114 S.W.2d 459 (1938).

Where municipal water plant was turned over to board of managers by ordinance, which did not authorize employ-

ment of superintendent, contract made by board employing superintendent, not authorized or approved by municipality, was not binding; payment of superintendent's salary could be enjoined, but the contract being neither illegal nor immoral, superintendent could retain salary already received if not in excess of the actual value of his services. *Gladson v. Wilson*, 196 Ark. 996, 120 S.W.2d 732 (1938).

Failure to have agreement for lease of space on county property for street purposes authorized by a resolution under this section was not a fatal defect where municipality ratified agreement by performing obligations thereunder. *Harrison v. Boone County*, 238 Ark. 113, 378 S.W.2d 665 (1964).

### **Majority.**

Where less than majority of qualified elected members of municipal council voted for approval of ordinance, injunction should have been granted. *Van Hovenberg v. Holman*, 201 Ark. 370, 144 S.W.2d 718 (1940).

### **Mayors.**

Mayor of second class city is a member of the municipal council of a second class city and thereby entitled to vote on the council's ordinances. *Clark v. Mahan*, 268 Ark. 37, 594 S.W.2d 7 (1980).

Mayor of city of the first class could break five-to-five city council tie vote to pass appropriation ordinance for the city's fiscal year. *Gibson v. City of Trumann*, 311 Ark. 561, 845 S.W.2d 515 (1993).

### **Passage.**

Mere passage of resolution by municipal council does not create in anyone a vested right to demand that land be devoted forever to public use; legislative measures

are, in the absence of vested rights, subject to repeal by later action of the legislative body. *Hammon v. Dixon*, 232 Ark. 537, 338 S.W.2d 941 (1960).

### **Recording.**

Unless yeas and nays are recorded on passage of a resolution of municipal council making contract, it will be void. *Cutler v. Russellville*, 40 Ark. 105 (1882); *Frick v. Brinkley*, 61 Ark. 397, 33 S.W. 527 (1895); *Oglesby v. City of Ft. Smith*, 105 Ark. 506, 152 S.W. 145 (1912); *City of Mena v. Tomlinson Bros.*, 118 Ark. 166, 175 S.W. 1187 (1915); *Gladson v. Wilson*, 196 Ark. 996, 120 S.W.2d 732 (1938).

Ordinance was invalid where ayes and noes were not called and recorded. *Natural Gas & Fuel Corp. v. Norphlet Gas & Water Co.*, 173 Ark. 174, 294 S.W. 52 (1927).

Failure to record names of those voting for and against an ordinance was not fatal to its validity, since this requirement applies only to ordinances authorizing the execution of contracts. *Holman v. Dierks*, 217 Ark. 677, 233 S.W.2d 392 (1950).

The purpose of recording votes is to make members of municipal council feel the responsibility of their action when important measures are before them, and to compel each member to bear his share in the responsibility, by a record of his action that should not afterwards be open to dispute. *Hammon v. Dixon*, 232 Ark. 537, 338 S.W.2d 941 (1960).

Where in recording passage of ordinance, the minutes recite that all the aldermen present voted in favor of it, this recording constitutes a substantial compliance with this section. *Hammon v. Dixon*, 232 Ark. 537, 338 S.W.2d 941 (1960).

## **14-55-204. Approval of appropriations.**

All bylaws, ordinances, resolutions, or orders for the appropriation of money shall require for their passage or adoption the concurrence of a majority of the aldermen of any municipal corporation.

**History.** Acts 1875, No. 1, § 86, p. 1; C. & M. Dig., § 7502; Pope's Dig., § 9562; A.S.A. 1947, § 19-2402.

**CASE NOTES****Mayors.**

Mayor of city of the first class could break five-to-five city council tie vote to pass appropriation ordinance for the city's

fiscal year. *Gibson v. City of Trumann*, 311 Ark. 561, 845 S.W.2d 515 (1993).

**Cited:** *City of Batesville v. Ball*, 100 Ark. 496, 140 S.W. 712 (1911).

**14-55-205. Recording and authentication.**

All bylaws or ordinances after their passage shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer of the governing body and the clerk or recorder.

**History.** Acts 1949, No. 36, § 1; A.S.A. 1947, § 19-2404.

**RESEARCH REFERENCES**

**UALR L.J.** *Heller and Sallings, Survey of Public Law*, 3 UALR L.J. 296 (1980).

*Survey of Arkansas Law: Public Law*, 4 UALR L.J. 243 (1981).

**CASE NOTES****ANALYSIS**

Construction.  
Applicability.  
Authentication.

**Construction.**

This section did not repeal § 14-55-402, relating to admissibility of copies of bylaws and ordinances in evidence. *City of Benton v. Nethercutt*, 264 Ark. 769, 574 S.W.2d 269 (1978).

**Applicability.**

This section applies only to bylaws and ordinances passed by a municipal council and is not applicable to resolutions passed

by a council. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

**Authentication.**

Authentication by acting mayor and acting recorder is sufficient. *Lackey v. Fayetteville Water Co.*, 80 Ark. 108, 96 S.W. 622 (1906) (decision under prior law).

Ordinance was legal though signed by mayor after his term of office had expired. *Arkansas Light & Power Co. v. City of Paragould*, 146 Ark. 1, 225 S.W. 435 (1920); *Lewis v. Forrest City Special Imp. Dist.*, 156 Ark. 356, 246 S.W. 867 (1923) (decisions under prior law).

**14-55-206. Publishing or posting requirements.**

(a)(1)(A) All bylaws or ordinances of a general or permanent nature and all those imposing any fine, penalty, or forfeiture shall be published in some newspaper published in the municipality.

(B) In municipalities in which no newspaper is published, written or printed notice posted in five (5) of the most public places designated by the governing body in an ordinance or minutes of the governing body shall be deemed a sufficient publication of any law or ordinance.

(2) It shall be deemed a sufficient defense to any suit or prosecution of such fine, penalty, or forfeiture to show that no notice was given as provided herein.



(b) As to ordinances establishing rules and regulations for zoning, construction of buildings, the installation of plumbing, the installation of electric wiring, or other similar work, where such rules and regulations have been printed as a code in book form, the code or provisions thereof may be published by the municipality by reference to title of the code without further publication or posting thereof. However, no fewer than three (3) copies of the code shall be filed for use and examination by the public in the office of the clerk or recorder of the municipality subsequent to the adoption thereof.

**History.** Acts 1949, No. 36, § 1; A.S.A. 1947, § 19-2404; Acts 1993, No. 295, § 2.

**Amendments.** The 1993 amendment, in (a)(1)(A), substituted “published in the municipality” for “of general circulation in the corporation”; in (a)(1)(B), substituted “In municipalities in which” for “In incorporated towns where” and substituted

“designated by the governing body in an ordinance or minutes of the governing body” for “in the town”; in (a)(2), substituted “no notice was given as provided herein” for “no publication was made”; and in the last sentence of (b), substituted “no fewer” for “not less” and deleted “city” preceding “clerk”.

RESEARCH REFERENCES

**UALR L.J.** Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296 (1980).

Survey of Arkansas Law: Public Law, 4 UALR L.J. 243 (1981).

CASE NOTES

ANALYSIS

- Construction.
- Applicability.
- Effective date.
- Notice.
- Publication.
- Scope of authority.

**Construction.**

This section did not repeal § 14-55-402, relating to admissibility of copies of by-laws and ordinances in evidence. *City of Benton v. Nethercutt*, 264 Ark. 769, 574 S.W.2d 269 (1978).

**Applicability.**

Former statute had no applicability to an ordinance entering into a special contract. *Barnett v. Mays*, 153 Ark. 1, 239 S.W. 379 (1922) (decision under prior law).

This section applies only to bylaws and ordinances passed by a municipal council and is not applicable to resolutions passed by a council. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

**Effective Date.**

The effective date of an ordinance of municipality is the date of its publication.

*City of Eureka Springs v. Brightman*, 243 Ark. 836, 422 S.W.2d 681 (1968).

Ordinance passed by unanimous vote of municipal council under suspension of rules and containing an emergency clause voted upon separately is effective upon adoption, its effectiveness not being suspended until publication. *Kemp v. Simmons*, 244 Ark. 1052, 428 S.W.2d 59 (1968).

**Notice.**

Written notice by manager of power company that installation of pumping plant had been completed per contract was acceptance of ordinance. *Arkansas Light & Power Co. v. City of Paragould*, 146 Ark. 1, 225 S.W. 435 (1920) (decision under prior law).

Where notice of hearing contained no statement that copies of a regulation or an ordinance and related documents were available for public examination, the notice did not comply with the statutory procedure by informing the public of the availability of the regulations prior to the passage of the ordinance. *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W.2d 259 (1992).



**Publication.**

Fact that municipal records failed to show publication of ordinance was insufficient to show that it had not been published; and it was the burden of the person interposing failure of publication as a defense to prove that no publication was made. *City of North Little Rock v. Kirk*, 173 Ark. 554, 292 S.W. 993 (1927) (decision under prior law).

Resolution authorizing and directing mayor to take census of town for the purpose of raising it to a city of the second class as prayed for in petition signed by more than 10 qualified electors and filed with the recorder and subsequent resolution resolving that application be made to have town declared a city of the second class was held within the purview of this section and should have been published. *McClellan v. Stuckey*, 196 Ark. 816, 120 S.W.2d 155 (1938) (decision under prior law).

A "resolution" declaring need for a housing authority was in fact an ordinance and an "enactment" of both general and permanent character — general in that it applied to all citizens of the municipality and permanent in that it would be effective until repealed — and, therefore, required publication as provided in this section before final enactment. *City of Eureka Springs v. Brightman*, 243 Ark. 836, 422 S.W.2d 681 (1968).

Where General Assembly had provided for establishment of a police court, in lieu of a municipal court, by cities upon reaching first class status until such time as the

governing body of the city determined that the city had sufficient funds to support a municipal court, such action by the General Assembly did not mean that a city of the first class could create a police court without first publishing an ordinance, by-law, or other act creating such a court as required by this section. *Landthrip v. City of Beebe*, 268 Ark. 45, 593 S.W.2d 458 (1980).

Ordinance which applied to all commercial and residential customers and would remain in force until repealed was both permanent and general, and the post-enactment publication was mandatory. Invalidity of municipal ordinance for failure to comply with § 14-235-223 and this section was not cured by subsequent publication of ordinance. *City of Ft. Smith v. O.K. Foods, Inc.*, 293 Ark. 379, 738 S.W.2d 96 (1987).

**Scope of Authority.**

This section authorizes adoption, by ordinance, of a preexisting code published in book form by referring to the code by title only in the publication of the ordinance, but does not authorize the adoption of an ordinance creating a code by publication of the title of the ordinance only. *Thomas v. Vaughn*, 249 Ark. 1043, 463 S.W.2d 102 (1971).

Subdivision (a)(1)(A), read in conjunction with § 14-55-101, clearly gives only the municipality the power to publish ordinances. *Phillips v. City of Eureka Springs*, 312 Ark. 57, 847 S.W.2d 21 (1993).

**14-55-207. Adoption of technical codes by reference.**

(a) Every municipality in the State of Arkansas is authorized by the passage of a municipal ordinance to adopt by reference technical codes, regulations, or standards, without setting forth the provisions of the code or parts thereof, if three (3) copies of the code, or the pertinent parts thereof, and any related documents are filed in the office of the clerk of the municipality for inspection and view by the public prior to the passage of the ordinance.

(b) The term "technical codes" shall include any building, zoning, health, electrical, or plumbing codes, and the term "regulations" shall include any criminal code of the State of Arkansas.

(c) It shall be the duty of the municipality to give a notice to the public, by publication in a paper of general circulation within the municipality, stating that copies of the code, or the pertinent parts

thereof, and the related documents are open to public examination prior to the passage of the ordinance adopting the code.

**History.** Acts 1949, No. 267, §§ 1-3;  
A.S.A. 1947, §§ 19-2421 — 19-2423.

### CASE NOTES

#### ANALYSIS

Notice.  
Zoning map.

#### Notice.

Where notice of hearing contained no statement that copies of a regulation or an ordinance and related documents were available for public examination, the notice did not comply with the statutory procedure by informing the public of the availability of the regulations prior to the

passage of the ordinance. *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W.2d 259 (1992).

#### Zoning Map.

Prior to the passage of the ordinance adopting the code, the proposed zoning map must be available for public examination for a reasonable length of time. *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W.2d 259 (1992).

**Cited:** *Holt v. City of Maumelle*, 647 F. Supp. 1529 (E.D. Ark. 1986).

### SUBCHAPTER 3 — REFERRAL TO ELECTORS

#### SECTION.

14-55-301. Proposed or adopted ordinances.

#### SECTION.

14-55-302. Enacted ordinances.

**Preambles.** Acts 1963, No. 218 contained a preamble which read: "Whereas, requests for legislation are made to the City Councils and governing bodies of municipalities in cases where it is difficult for the aldermen to know the true desires of the people; and

"Whereas, in certain controversial matters the Council would prefer the people make their desires known by vote of the electors; and

"Whereas, at present there is no procedure by which a city council may refer a measure to the people and the electors can refer an ordinance only after the city council has enacted the ordinance and in some municipalities a period of two years must elapse before the people can exercise

their rights under the Constitution to initiate a measure themselves;

"Now, therefore"....

**Effective Dates.** Acts 1981, No. 220, § 3: Feb. 26, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is confusion regarding the right of the people to exercise the initiative and referendum with respect to county and municipal measures; that this Act is designed to clarify this confusion and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### 14-55-301. Proposed or adopted ordinances.

(a) The city council or governing body of any municipality, by a majority vote of its members, may refer any proposed ordinance to the people for adoption or rejection.

(b) The city council, or governing body, may at the time of, or within thirty (30) days of, the adoption of any ordinance refer the ordinance to the electors for their acceptance or rejection by a two-thirds ( $\frac{2}{3}$ ) vote of the members of the council.

(c) The action of the city council shall constitute a referral to the people, and from that point the procedure shall be that as required by Arkansas Constitution, Amendment 7.

**History.** Acts 1963, No. 218, §§ 1-3;  
A.S.A. 1947, §§ 19-2428 — 19-2430.

### CASE NOTES

**Notice.**

This section does not require notice as specified in § 7-5-202 in the referral of a

municipal ordinance to the people. *Cowling v. Foreman*, 238 Ark. 677, 384 S.W.2d 251 (1964).

### 14-55-302. Enacted ordinances.

Any ordinance enacted by the governing body of any city or town in the state may be referred to a vote of the electors of the city or town for approval or rejection in the manner and procedure prescribed in Arkansas Constitution, Amendment 7, and laws enacted pursuant thereto for exercising the local initiative and referendum, and the manner and procedure prescribed therein shall be the exclusive method of exercising the initiative and referendum regarding these local measures.

**History.** Acts 1981, No. 220, § 1;  
A.S.A. 1947, § 17-4003.1.

## SUBCHAPTER 4 — EFFECT OF PASSAGE

SECTION.

14-55-401. Existing ordinances continue in force.

SECTION.

14-55-402. Admissibility of copies in evidence.

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**Effective Dates.** Acts 1875, No. 1,  
§ 95: effective on passage.

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### 14-55-401. Existing ordinances continue in force.

All laws, ordinances, resolutions, or orders, lawfully passed and adopted by the city or town council, not inconsistent with the Constitution or laws of this state, shall be, remain, and continue in force until altered or repealed by the council.



**History.** Acts 1875, No. 1, § 33, p. 1; C. & M. Dig., § 7500; Pope's Dig., § 9560; A.S.A. 1947, § 19-2406.

**Publisher's Notes.** Acts 1875, No. 1, § 33 (3rd sentence), provided that all special acts relating to any municipal corporation repealed by § 5 of this act would, so

far as they affected particular police regulations or local affairs in matters not inconsistent with this act, remain in force as bylaws and ordinances of the particular corporation until altered or repealed by the city or town council.

CASE NOTES

**Repeals.**

Rule that a statute does not repeal a prior statute unless in irreconcilable con-

flict therewith applies to municipal ordinances. *City of Helena v. Russwurm*, 188 Ark. 968, 68 S.W.2d 1009 (1934).

14-55-402. Admissibility of copies in evidence.

(a) The printed copies of the bylaws and ordinances of any municipal corporation published under its authority, and transcripts of any bylaw, ordinance, or of any act or proceeding of any municipal corporation, recorded in any book or entered on any minutes or journal, kept under the direction of the municipal corporation and certified by its clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received with as much effect.

(b) It shall be the duty of the clerk or recorder to furnish the transcript to persons demanding it, and he shall be entitled to charge therefor at the same rate that the clerks of the county and circuit court are entitled to charge for transcripts for such courts.

**History.** Acts 1875, No. 1, § 27, p. 1; C. & M. Dig., §§ 7497, 7498; Pope's Dig., §§ 9557, 9558; A.S.A. 1947, § 19-2405.

**Cross References.** Printed copies of ordinances admissible in evidence, § 16-46-203.

RESEARCH REFERENCES

**UALR L.J.** Heller and Sallings, Survey of Public Law, 3 UALR L.J. 296.

CASE NOTES

ANALYSIS

- Construction.
- Judicial notice.
- Objections.
- Parol evidence.
- Printed copies.

**Construction.**

Sections 14-55-205 and 14-55-206 did not repeal this section. *City of Benton v. Nethercutt*, 264 Ark. 769, 574 S.W.2d 269 (1978).

**Judicial Notice.**

Courts will not take judicial notice of municipal ordinances. *Strickland v. State*, 68 Ark. 483, 60 S.W. 26 (1900); *Bolstad v. Pergeson*, 305 Ark. 163, 806 S.W.2d 377 (1991).

**Objections.**

Failure to object and except to the manner in which an ordinance is introduced waives a formal introduction thereof in the manner provided by this section. *Sharp v. City of Booneville*, 177 Ark. 294, 6 S.W.2d 295 (1928).

**Parol Evidence.**

Parol evidence is not admissible to prove an ordinance or resolution of a municipal council; the ordinance or resolution itself, or a certified copy of it, must be produced. *Pugh v. Little Rock*, 35 Ark. 75 (1879).

Where record of municipal ordinances kept by the clerk, together with the journals showing the progress of the ordinances through municipal council, show a valid ordinance, they cannot be attacked by parol evidence. *Lewis v. Forrest City Special Imp. Dist.*, 156 Ark. 356, 246 S.W. 867 (1923).

Where admission of copies of resolutions of municipal council was objected to on grounds they were not recorded or on file in the office of the municipal clerk, parol evidence of the municipal clerk was sufficient to admit them under this section. *Adams v. Sims*, 238 Ark. 696, 385 S.W.2d 13 (1964).

**Printed Copies.**

Printed copy of municipal ordinance published by authority of a municipality is

prima facie evidence of the legal existence of the ordinance and its contents. *Van Buren v. Wells*, 53 Ark. 368, 14 S.W. 38 (1890); *Arkadelphia Lumber Co. v. City of Arkadelphia*, 56 Ark. 370, 19 S.W. 1053 (1892).

The record is prima facie evidence that an ordinance was enacted. *Arkansas Light & Power Co. v. City of Paragould*, 146 Ark. 1, 225 S.W. 435 (1920).

An ordinance of a municipality may be proved by a printed copy properly certified. *Indemnity Ins. Co. v. Harrison*, 186 Ark. 590, 54 S.W.2d 692 (1932).

Proof of publication of notice of adoption of an ordinance, with a printed copy attached, from the local newspaper, filed in a municipal ordinance book became a part thereof sufficient to satisfy this section. *City of Benton v. Nethercutt*, 264 Ark. 769, 574 S.W.2d 269 (1978).

**SUBCHAPTER 5 — PRESCRIBING OF PENALTIES**

SECTION.

- 14-55-501. Authority generally.
- 14-55-502. State law to be followed.
- 14-55-503. Effect of conviction.

SECTION.

- 14-55-504. Maximum penalties permitted.

**Effective Dates.** Acts 1891, No. 59, § 4: effective on passage.

Acts 1897, No. 22, § 3: effective on passage.

Acts 1899, No. 36, § 2: effective on passage.

**14-55-501. Authority generally.**

The town or city council in all cities or incorporated towns in this state are authorized and empowered to prohibit and punish any act, matter, or thing which the laws of this state make a misdemeanor.

**History.** Acts 1891, No. 59, § 1, p. 96; § 7496; Pope's Dig., § 9556; A.S.A. 1947, 1897, No. 22, § 1, p. 29; C. & M. Dig., § 19-2410.

## CASE NOTES

## ANALYSIS

Adoption.

Fees and penalties.

**Adoption.**

Municipal ordinance adopting certain statutory provisions as misdemeanors will be held to have made provisions a part of the valid ordinances of the municipality. *Searcy v. Turner*, 88 Ark. 210, 114 S.W. 472 (1908).

A printed copy of a municipal ordinance published by authority of the municipality is prima facie evidence of the legal existence of the ordinance and its contents. *Heno v. City of Fayetteville*, 90 Ark. 292, 119 S.W. 287 (1909).

**Fees and Penalties.**

A municipality was held entitled to retain all the fees and penalties imposed by

the mayor's court for violation of its ordinances, notwithstanding that the ordinances made the same acts offenses as were made offenses against the state by statute, and the county was entitled only to such fines and penalties as were imposed by the mayors of such courts acting in their capacity of justice of the peace for the violation of state laws within their jurisdiction. *Incorporated Town of Pocahontas v. State*, 114 Ark. 448, 170 S.W. 89 (1914).

Penalties fixed by a city must fall within the state minimums and maximums. *Ford v. City of Hot Springs*, 294 Ark. 435, 743 S.W.2d 394 (1988).

**14-55-502. State law to be followed.**

(a) The town or city council in all cities or incorporated towns in this state are authorized and empowered to prescribe penalties for all offenses in violating any ordinance of the city or town not exceeding the penalties prescribed for similar offenses against the state laws by the statutes of this state.

(b) It shall be unlawful for any town or city council in this state to prescribe, by city ordinance, less severe penalties for all offenses in violation of any ordinance of the city or town than are prescribed for similar offenses against the state laws by the statutes of this state.

**History.** Acts 1891, No. 59, § 1, p. 96; 1897, No. 22, § 1, p. 29; 1899, No. 36, § 1, p. 45; C. & M. Dig., §§ 7496, 7555; Pope's Dig., §§ 9556, 9629; A.S.A. 1947, §§ 19-2410, 19-2411.

## CASE NOTES

## ANALYSIS

Imprisonment.

Less severe penalties.

Penalties not exceeding state law.

**Imprisonment.**

The General Assembly did not intend for cities to impose penalties of imprisonment for violation of city ordinances, unless those ordinances regulate conduct proscribed under a valid state statute, in which case the General Assembly has ordered that cities are not permitted to

provide lesser penalties than those demanded by the statutes. *Pursley v. City of Fayetteville*, 628 F. Supp. 676 (W.D. Ark. 1986), rev'd on other grounds, 820 F.2d 951 (8th Cir. 1987).

**Less Severe Penalties.**

Where ordinance under which person was tried was void because it prescribed a less penalty than that prescribed by state laws, nevertheless, he was not prejudiced because the fine adjudged against him was less than he would have had to pay had he been tried under the state laws.



Robinson v. City of Malvern, 118 Ark. 423, 176 S.W. 675 (1915).

Ordinances that fix minimum fines for misdemeanors are properly invalid where the ordinances prescribe a minimum penalty substantially less than that fixed by state law, since the penalty fixed by a municipality must fall within the minimum and maximum penalty prescribed by state law for a similar offense. *Wright v. Burton*, 279 Ark. 1, 648 S.W.2d 794 (1983).

#### **Penalties Not Exceeding State Law.**

Ordinance making something a misde-

meanor cannot be broader than the statute upon which it is based, and hence that which would be a defense to a prosecution under the statute will be a defense to a prosecution under the ordinance. *Greenwood v. Smothers*, 103 Ark. 158, 146 S.W. 109 (1912).

Penalties fixed by a city must fall within the state minimums and maximums. *Ford v. City of Hot Springs*, 294 Ark. 435, 743 S.W.2d 394 (1988).

### **14-55-503. Effect of conviction.**

Upon conviction of any person under an ordinance before any police or city court, the conviction shall be, and operate as, a bar to further prosecution in any of the courts of this state for the same offense.

**History.** Acts 1899, No. 36, § 1, p. 45; C. & M. Dig., § 7555; Pope's Dig., § 9629; A.S.A. 1947, § 19-2411.

**Cross References.** Conviction bar to further prosecution, § 16-85-712.

### **14-55-504. Maximum penalties permitted.**

(a)(1) Municipal corporations shall not have power to inflict any fine or penalty, by ordinance or otherwise, to a greater sum than five hundred dollars (\$500) for any one (1) specified offense or violation of a bylaw or ordinance, or double that sum for each repetition of such offense or violation.

(2) If a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the bylaw or ordinance, shall not exceed two hundred fifty dollars (\$250) for each day that it may be unlawfully continued.

(b) If any bylaw or ordinance provides for any greater fine, penalty, or forfeiture than is provided in this section, it shall and may be lawful, in any suit or prosecution for the recovery thereof, to reduce it to such amount as shall be deemed reasonable and proper and to permit a recovery or render a judgment for such amount as authorized.

**History.** Acts 1875, No. 1, § 24, p. 1; C. §§ 9631, 9632; Acts 1975, No. 548, § 1; & M. Dig., §§ 7557, 7558; Pope's Dig., A.S.A. 1947, § 19-2409.

### **CASE NOTES**

#### **ANALYSIS**

Construction.  
Authority.  
Imprisonment.

Reduction of amount.

#### **Construction.**

Section 14-55-502(a) enlarged the provisions of subdivision (a)(1). *Richardson v.*

State, 56 Ark. 367, 19 S.W. 1052 (1892).

#### **Authority.**

Penalty provisions of ordinance prohibiting serving or consumption of mixed drinks at private clubs during early morning hours were held authorized under this section. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

#### **Imprisonment.**

The General Assembly did not intend for cities to impose penalties of imprisonment for violation of city ordinances, unless those ordinances regulate conduct proscribed under a valid state statute, in which case the General Assembly has ordered that cities are not permitted to provide lesser penalties than those de-

manded by the statutes. *Pursley v. City of Fayetteville*, 628 F. Supp. 676 (W.D. Ark. 1986), rev'd on other grounds, 820 F.2d 951 (8th Cir. 1987).

#### **Reduction of Amount.**

Ordinance is not invalidated by fixing a penalty for its violation in excess of that allowed by this section, since the penalty would be reduced to the amount authorized by law in such cases. *City of Little Rock v. Reinman*, 107 Ark. 174, 155 S.W. 105 (1913), aff'd sub nom, *Reinman v. City of Little Rock*, 237 U.S. 171, 35 S. Ct. 511, 59 L. Ed. 900 (1915); *Scott v. Roberson*, 145 Ark. 408, 224 S.W. 746 (1920).

**Cited:** *Weeks v. Paragould*, 230 Ark. 908, 328 S.W.2d 81 (1959).

## **SUBCHAPTER 6 — ENFORCEMENT AND REMEDIES**

#### **SECTION.**

- 14-55-601. Power to enforce generally.
- 14-55-602. Imprisonment to enforce fine.
- 14-55-603. Outside work for jailed persons.
- 14-55-604. Working out of fines.
- 14-55-605. Suit for recovery of fines, etc.

#### **SECTION.**

- 14-55-606. Additional remedies of cities of the first class.
- 14-55-607. Additional remedies of cities of the second class.
- 14-55-608. Disposition of fines.

**Cross References.** Mayor to cause ordinances to be obeyed, § 14-43-504(a).

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1885, No. 67, § 7: effective on passage.

Acts 1891, No. 59, § 4: effective on passage.

Acts 1897 (Ex. Sess.), No. 24, § 4: effective on passage.

### **14-55-601. Power to enforce generally.**

(a) Bylaws and ordinances of municipal corporations may be enforced by the imposition of fines, forfeitures, and penalties on any person offending against or violating them.

(b)(1) The fine, penalty, or forfeiture may be prescribed in each particular bylaw or ordinance, or by a general bylaw or ordinance made for that purpose.

(2) Municipal corporations shall have power to provide in like manner for the prosecution, recovery, and collection of the fines, penalties, and forfeitures.

**History.** Acts 1875, No. 1, § 23, p. 1; C. & M. Dig., § 7495; Pope's Dig., § 9544; A.S.A. 1947, § 19-2408.

## CASE NOTES

## ANALYSIS

Penalties.  
Violations.

**Penalties.**

The General Assembly did not intend for cities to impose penalties of imprisonment for violation of city ordinances, unless those ordinances regulate conduct proscribed under a valid state statute, in which case the General Assembly has ordered that cities are not permitted to provide lesser penalties than those demanded by the statutes. *Pursley v. City of Fayetteville*, 628 F. Supp. 676 (W.D. Ark.

1986), rev'd on other grounds, 820 F.2d 951 (8th Cir. 1987).

**Violations.**

Fact that a dog might be impounded does not prevent a municipality from enforcing an ordinance that makes it unlawful for persons to allow their dogs to run at large by levying a fine against persons who violate the ordinance. *Weeks v. City of Paragould*, 230 Ark. 908, 328 S.W.2d 81 (1959).

**Cited:** *Gore v. Emerson*, 262 Ark. 463, 557 S.W.2d 880 (1977); *Arkansas County v. Burris*, 308 Ark. 490, 825 S.W.2d 590 (1992).

**14-55-602. Imprisonment to enforce fine.**

(a)(1) The city council shall have power to provide that, when a fine shall be imposed for the violation of any of the ordinances of the city and it is not paid, the party convicted shall, by order of the mayor or other proper authority or on process issued for the purpose, be committed until the fine and costs of prosecution shall be paid, or the party discharged by due course of law.

(2) The council shall also have power to provide that any person convicted of a repeated and willful violation of any ordinance, who shall refuse or neglect to pay the fine imposed and the cost of prosecution, by like order or process, shall be imprisoned and kept in confinement for any term not exceeding thirty (30) days.

(b) Any city shall be allowed, for the purpose of imprisonment authorized under this section, the use of the county jail of the proper county. All persons so imprisoned shall be under the charge of the sheriff of the county, who shall receive and discharge the persons in such manner as shall be prescribed by the ordinances of the city, or otherwise, by due course of law.

**History.** Acts 1875, No. 1, § 9, p. 1; C. & M. Dig., §§ 7598, 7600, 7603; Pope's Dig., §§ 9684, 9686, 9698; A.S.A. 1947, §§ 19-2413, 19-2414.

**Cross References.** City jails, § 12-41-401 et seq.

**14-55-603. Outside work for jailed persons.**

Prisoners confined in the county jail or city prison, by sentence of the city or police court, for a violation of a city or town bylaw, ordinance, or regulation, may, by ordinance, be required to work out the amount of all fines, penalties, forfeitures, and costs at the rate prescribed in § 16-90-108, on the streets or other improvement under the control of the city council.



**History.** Acts 1875, No. 1, § 87, p. 1; C. & M. Dig., § 7562; Pope's Dig., § 9636; A.S.A. 1947, § 19-2416.

#### **14-55-604. Working out of fines.**

The city council may, at its discretion, provide, by ordinance, that fines imposed for violation of ordinances may be discharged by the offender working out the fine upon the streets or alleys of the towns, at the rate prescribed in § 16-90-108, and may adopt all necessary regulations for the safekeeping, management, and control of offenders while working out the fine.

**History.** Acts 1875, No. 1, § 9, p. 1; C. & M. Dig., § 7601; Pope's Dig., § 9687; A.S.A. 1947, § 19-2415.

**Publisher's Notes.** This section provides that the "city" council may legislate,

etc., but refers to streets or alleys of the "towns" afterwards.

**Cross References.** Labor of city prisoners, § 12-42-101 et seq.

#### **14-55-605. Suit for recovery of fines, etc.**

(a) Fines, penalties, and forfeitures, in all cases and in addition to any other mode provided, may be recovered by suit or action before any court of competent jurisdiction, in the name of the proper municipal corporation and for its use.

(b) In such a suit or action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due, in respect to the bylaw or ordinance, referring to its title and the date of its adoption or passage, and showing, as nearly as may be, the true time of the alleged violation.

(c) All suits or prosecutions for the recovery of any fines, penalties, or forfeitures, or for the commission of any offense made punishable by any bylaw or ordinance of any municipal corporation, shall be commenced within one (1) year after the violation of the bylaw or ordinance, or commission of the offense, and not afterwards, if the offender has remained within the jurisdiction of the municipal corporation during the one (1) year. If not, then the limitation provided in this subsection shall extend for the term of five (5) years.

**History.** Acts 1875, No. 1, §§ 25, 26, p. 1; C. & M. Dig., §§ 7559, 7561; Pope's Dig., §§ 9633, 9635; A.S.A. 1947, §§ 19-2417, 19-2418.

#### **14-55-606. Additional remedies of cities of the first class.**

(a)(1) In all cases of violation of any of its ordinances, any city of the first class, in addition to any other mode provided by law, shall have the right to recover in a civil action the amount of the lowest penalty or fines provided in the ordinance for each violation or, where the offense is in its nature continuous in respect to time, for each day's violation thereof, and also the amount of any license which the person guilty of the violations was required by any such ordinance to take out.

(2) The municipal court shall have jurisdiction in all such actions concurrent with justices of the peace.

(b) In all cases where a fine may have been imposed by the municipal court, that court, in addition to the power of enforcing payment of the fine by imprisonment, shall have full power to issue an execution or writ of garnishment, to be executed by the chief of police, in like manner and with like effect as if issued by a justice of the peace in any civil case tried before him, and like proceedings may be had thereunder.

**History.** Acts 1885, No. 67, § 5, p. 92;  
C. & M. Dig., § 7735; Pope's Dig., § 9931;  
A.S.A. 1947, § 19-2419.

### **14-55-607. Additional remedies of cities of the second class.**

In all cases of violation of any of its ordinances, any city of the second class, in addition to the modes provided by law, shall have the right to recover, in a civil action, the amount of the penalty or fines provided by the bylaws or ordinances of these cities or imposed by the mayor thereof for a violation of any ordinance or bylaw. In addition to the power to enforce payment of a fine or penalty by imprisonment, the mayor shall have full power to issue an execution or writ of garnishment, to be executed by the marshal, in like manner and with like effect as if issued by a justice of the peace in any civil action tried before him, and like proceedings be had thereunder.

**History.** Acts 1897 (Ex. Sess.), No. 24,  
§ 3, p. 69; C. & M. Dig., § 7686; Pope's  
Dig., § 9815; A.S.A. 1947, § 19-2420.

### **14-55-608. Disposition of fines.**

(a) All fines and penalties imposed by the city, police, or municipal court in any city or incorporated town in this state shall be paid into the city or town treasury.

(b) The city or town councils shall have power to prescribe all necessary regulations for the collection of, and accounting for, fines and penalties.

**History.** Acts 1891, No. 59, § 2, p. 97;  
C. & M. Dig., § 7556; Pope's Dig., § 9630;  
A.S.A. 1947, § 19-2412.

## **CASE NOTES**

### **State Offenses.**

An incorporated town is entitled to fines collected in the mayor's court for violation of an ordinance imposing penalties for acts which were also offenses against the state. *Hackett City v. State*, 56 Ark. 133, 19 S.W. 426 (1892).

All fines imposed by city courts for violation of city ordinances are payable into the city treasury notwithstanding the acts are punishable as offenses against the state. *State ex rel. Ft. Smith Dist. v. City of Ft. Smith*, 56 Ark. 137, 19 S.W. 427 (1892).

**SUBCHAPTER 7 — CODIFICATION OF ORDINANCES**

## SECTION.

14-55-701. Authority to revise and codify.

14-55-702. Copies of code filed.

14-55-703. Code prima facie evidence.

## SECTION.

14-55-704. Amendment of code authorized.

**14-55-701. Authority to revise and codify.**

(a) Any municipality is authorized and empowered to revise and codify its ordinances, or any part of them, into one (1) or more volumes, either bound or in loose-leaf form, without the publication or posting of any part thereof.

(b)(1) The ordinance adopting the revision or codification shall be enacted in accordance with the requirements for the passage of ordinances pertaining to the municipality.

(2) The ordinance adopting the revision or codification may provide for the repeal of certain ordinances and parts of ordinances by the deletion or omission of them from the revision or codification.

**History.** Acts 1961, No. 209, § 1; A.S.A. 1947, § 19-2424.

**Publisher's Notes.** Acts 1961, No. 209, § 4, provided that any revision or codification of ordinances adopted at any time

prior to June 8, 1961, which would have been valid if this section had been in effect, were ratified and validated in all respects whatsoever.

**14-55-702. Copies of code filed.**

Upon the adoption of any municipal code or revision, three (3) copies of it shall be filed and maintained in the office of the city clerk.

**History.** Acts 1961, No. 209, § 2; A.S.A. 1947, § 19-2425.

**14-55-703. Code prima facie evidence.**

In determining the content of any ordinance so codified, it shall not be necessary to go beyond the code. The code shall be admitted in evidence without further proof and shall be prima facie evidence in all courts of the existence and regular enactment of each particular ordinance contained therein.

**History.** Acts 1961, No. 209, § 2; A.S.A. 1947, § 19-2425.

**14-55-704. Amendment of code authorized.**

(a) Municipal codes or revisions may be amended from time to time by ordinances duly enacted and published as required by law and passed in such form as to indicate the intention of the legislative body of the city to make them a part of the code or revision.

(b) When so passed, copies of the ordinances shall be inserted in the copies of the code or revision maintained by the city clerk, and the



ordinances shall be deemed a part of the code or revision and shall have the same force and effect as if included therein at the time of the original adoption of the code or revision. However, under this section any amendment shall not be deemed to give any amending ordinance retroactive effect.

**History.** Acts 1961, No. 209, § 3;  
A.S.A. 1947, § 19-2426.

## CHAPTER 56

### MUNICIPAL BUILDING AND ZONING REGULATIONS—PLANNING

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BUILDING REGULATIONS.
3. ZONING REGULATIONS.
4. MUNICIPAL PLANNING.
5. METROPOLITAN OR REGIONAL PLANNING COMMISSIONS.
6. COMMERCIAL MEDICAL WASTE INCINERATORS.

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#### RESEARCH REFERENCES

**ALR.** Zoning regulations prohibiting or limiting fences, hedges, or walls. 1 ALR 4th 373.

“War zone” ordinances restricting location of sex-oriented businesses. 1 ALR 4th 1297.

Enforcement of zoning regulation as affected by other violations. 4 ALR 4th 462.

Validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners. 7 ALR 4th 732.

Standing of civic or property owners’ association to challenge zoning board decision (as aggrieved party). 8 ALR 4th 1087.

Construction of new building or structure on premises devoted to nonconforming use as zoning violation. 10 ALR 4th 1122.

Ordinance restricting number of unrelated persons who can live together in residential zone. 12 ALR 4th 238.

Standing of zoning board of appeals or similar body to appeal reversal of its decision. 13 ALR 4th 1130.

Zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks. 17 ALR 4th 106.

Local use zoning of wetlands or flood plain as taking without compensation. 19 ALR 4th 756.

Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons. 32 ALR 4th 1018.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence. 87 ALR 4th 294.

Validity of zoning laws setting minimum lot size requirements. 1 ALR 5th 622.

Validity and construction of zoning regulations relating to illuminated signs. 30 ALR 5th 549.

Applicability of zoning regulations to governmental projects or activities. 53 ALR 5th 1.

**Am. Jur.** 83 Am. Jur. 2d, Zoning, §§ 7 et seq, 17 et seq., 128 et seq., 161.7, 520, 611.

**Ark. L. Rev.** Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.

Regulation of Urban Nonconforming Uses in Arkansas: Limitation and Termination, 16 Ark. L. Rev. 270.

Judicial Review of Zoning in Arkansas, 23 Ark. L. Rev. 22.

Land Use — Mandatory Dedication for Park and Recreational Facilities, 26 Ark. L. Rev. 415.

Land Use — Wetlands Regulation, 27 Ark. L. Rev. 527.

The Role of Neighbors in Zoning Cases, 28 Ark. L. Rev. 221.

Judicial Handling of Restrictive Covenants in Arkansas Residential Subdivisions, 28 Ark. L. Rev. 245.

Zoning — The Expanding Business District Doctrine in Arkansas: An Obstacle to Land Use Planning, 28 Ark. L. Rev. 262.

Riggs, Case Note: Zoning — Termination of Preexisting Nonconforming Uses, 32 Ark. L. Rev. 797.

**C.J.S.** 62 C.J.S., Mun. Corp., § 225 et seq.

**UALR L.J.** Wright, Zoning Law in Arkansas: A Comparative Analysis, 3 UALR L.J. 421.

Note, Property — Zoning — The Courts Further Define Their Limited Role. *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981). 5 UALR L.J. 279.

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## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

14-56-101. Liability for excavations.

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**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

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### 14-56-101. Liability for excavations.

If the owner or possessor of any lot or land in any city or incorporated town in this state shall dig or cause to be dug any cellar, pit, vault, or excavation to a greater depth than twelve feet (12') below the curb of the street on which the lot or land abuts, or, if there is no curb, below the surface of the adjoining lots, and shall, by this excavation, cause any damage to any wall, house, or other building upon the lots, adjoining thereto, the owner or possessor shall be liable, in a civil action, to the party injured, to the full amount of the damage. However, the owner or possessor may dig or cause to be dug any cellar, pit, or excavation, to the full depth of any foundation walls of any building upon the adjoining lots, and to the full depth of twelve feet (12') below the grade of the street whereon the lot abuts, established by the corporation authority, without incurring the liability prescribed by this section.

**History.** Acts 1875, No. 1, § 34, p. 1; C. & M. Dig., § 7545; A.S.A. 1947, § 19-2819.

### CASE NOTES

#### Court Decisions.

Where previous holding was based on old zoning statute, it was necessarily modified by the passage of superseding statute, for a strict and literal interpretation

of all the language in that case would certainly result in nullification of subsequent statute. *City of Little Rock v. Parker*, 241 Ark. 381, 407 S.W.2d 921 (1966).

## SUBCHAPTER 2 — BUILDING REGULATIONS

### SECTION.

14-56-201. Authority generally.

14-56-202. Additional powers of cities of the first class.

### SECTION.

14-56-203. Removal or razing of buildings.

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1887, No. 32, § 2: effective on passage.

Acts 1907, No. 352, § 3: effective on passage.

Acts 1939, No. 102, § 2: Feb. 17, 1939. Emergency clause provided: "Whereas,

the erection of buildings of a non-fireproof nature in congested areas constitutes a menace to the public safety, an emergency is hereby declared, and this act is necessary for the public peace, health and safety and shall be in full force and effect after its passage and approval."

## RESEARCH REFERENCES

**ALR.** Requirement of compliance with housing code before rent increase or possession by new tenant. 20 ALR 4th 1246.

Liability of governmental entity to builder or developer for negligent issu-

ance of building permit subsequently suspended or revoked. 41 ALR 4th 99.

**Ark. L. Rev.** Equity — Enjoinability of Threatened Nuisance, 6 Ark. L. Rev. 231.

### 14-56-201. Authority generally.

Municipal corporations shall have the power to:

(1) Regulate the erection, construction, reconstruction, alteration, and repair of buildings;

(2) Make regulations for the purpose of guarding against accidents by fire;

(3) Require the use of fireproof or fire-resistant materials in the erection, construction, reconstruction, alteration, or repairs of buildings; and

(4) Provide for the removal of any buildings, or additions thereto, erected contrary to this prohibition.

**History.** Acts 1875, No. 1, § 13, p. 1; § 7544; Pope's Dig., § 9619; Acts 1939, 1887, No. 32, § 1, p. 41; C. & M. Dig., No. 102, § 1; A.S.A. 1947, § 19-2801.

## CASE NOTES

### ANALYSIS

Erection, construction, etc.

Fire prevention.

### Erection, Construction, Etc.

A city may regulate the construction of buildings, but it cannot prevent construction unless the proposed construction is dangerous per se to the public health and

safety. *Bennett v. Hope*, 204 Ark. 147, 161 S.W.2d 186 (1942).

Provisions authorizing a city to regulate the construction, alteration, and repair of buildings by passing ordinances for the general welfare does not authorize an ordinance establishing building and setback lines. *City of Stuttgart v. Strait*, 212 Ark. 126, 205 S.W.2d 35 (1947).



Where general zoning law of state provides for certain procedure and statutory provisions authorize the giving of permits by city council in special instances, a permit given by the council is valid, but if ordinances are not passed under provisions providing for issuance of permits, but under a statute which did not provide for permits, the provisions allowing for permits are not relevant in determining validity of permit. *Meyer v. Seifert*, 216 Ark. 293, 225 S.W.2d 4 (1949).

Cities, in certain instances, have the authority to regulate some features relating to public buildings. Where the ordinance is not before the reviewing court, the court cannot make a sweeping finding that the municipality cannot regulate, in any manner, any phase, aspect, or feature relating to the construction of a public building. *Lavender v. Rogers*, 232 Ark. 673, 339 S.W.2d 598 (1960); *Lavender v. Rogers*, 233 Ark. 161, 343 S.W.2d 103 (1961).

A board of adjustment had authority to authorize the enlargement of a kindergarten being operated in a residential district as a preexisting nonconforming use of the property. *Williams v. Kuehnert*, 243 Ark. 746, 421 S.W.2d 896 (1967).

### Fire Prevention.

A town council has power to prohibit the erection of wooden buildings in certain

districts of the town as a precaution against fire; and if such building be erected in violation of an ordinance prohibiting it, the council may promptly remove it without any prosecution or judicial proceedings of any kind against the owner of the building. *McKibbin v. Fort Smith*, 35 Ark. 352 (1880). See *Paris v. Hall*, 131 Ark. 104, 198 S.W. 705 (1917).

City may extend its fire limits, but cannot give it an ex post facto effect. *Wilder v. City of Little Rock*, 150 Ark. 439, 234 S.W. 479 (1921).

An ordinance prohibiting the construction of wooden buildings and enlargement and alteration of old buildings within fire limits is authorized. The term "alteration" means that an old building shall not be changed in such a way as to convert it into a new and different structure. *Earle v. Shackelford*, 177 Ark. 291, 6 S.W.2d 294 (1928).

Where city passed ordinances relative to guarding against destruction of buildings by fire and prohibited erection of nonfireproof building, a permit issued by the city council to erect a nonfireproof building was invalid where statute under which ordinances were passed did not provide for issuance of permits. *Meyer v. Seifert*, 216 Ark. 293, 225 S.W.2d 4 (1949).

**Cited:** *Corning v. Watson*, 252 Ark. 1277, 482 S.W.2d 797 (1972).

## 14-56-202. Additional powers of cities of the first class.

The following enlarged and additional powers are conferred upon cities of the first class. They shall have the power to:

- (1) Regulate the building of houses;
- (2) Provide that no house or structure shall be erected within the city limits except upon a permit to be issued by such officer as the city council shall designate; and
- (3) Provide that no permit shall be issued for the building of any house or structure deemed to be unsafe, unsanitary, obnoxious, or detrimental to the public welfare.

**History.** Acts 1907, No. 352, § 1, p. 842; C. & M. Dig., § 7754; Pope's Dig., § 10053; A.S.A. 1947, § 19-2802.

## CASE NOTES

### ANALYSIS

Building of houses.  
Permits.

### Building of Houses.

The authority of a city of first class to regulate the building of houses does not give the city the authority to establish a

building line. *City of Stuttgart v. Strait*, 212 Ark. 126, 205 S.W.2d 35 (1947).

#### Permits.

The grant of a permit to erect a frame building is not a contract; and, until vested rights accrue under it, the city may extend its fire limits so as to prevent the erection of such building. *Wilder v. City of Little Rock*, 150 Ark. 439, 234 S.W. 479 (1921).

Large outside signboard constructed wholly of wood with a steel sheeting front

was held to be a "structure" within the meaning of ordinance couched in the same general terms as this section. *Seiz v. City of Hot Springs*, 194 Ark. 544, 108 S.W.2d 897 (1937).

In an action to compel the issuance of a building permit, the findings of the chancellor denying such action will not be disturbed on a disputed fact, unless such findings are against the preponderance of the evidence. *City of Little Rock v. Tate*, 212 Ark. 1003, 209 S.W.2d 92 (1948).

### 14-56-203. Removal or razing of buildings.

Cities of the first and second class shall have the power to order the removal or razing of, or to remove or raze, any buildings or houses that in the opinion of the council have become dilapidated, unsightly, unsafe, unsanitary, obnoxious, or detrimental to the public welfare and shall provide, by ordinance, the manner of removing and making these removals.

**History.** Acts 1907, No. 352, § 2, p. 842; C. & M. Dig., § 7755; Pope's Dig., § 10054; Acts 1979, No. 219, § 1; A.S.A. 1947, § 19-2803.

**Cross References.** Enforcement of removal or razing orders, § 14-54-904.

### CASE NOTES

#### ANALYSIS

Constitutionality.

Authority.

Compensation.

#### Constitutionality.

Where preponderance of evidence was to effect that buildings in question were a fire, health, and structural hazard, decree ordering their destruction under city ordinance enacted under the authority of this section was proper and did not constitute a violation of owner's constitutional rights. *Springfield v. City of Little Rock*, 226 Ark. 462, 290 S.W.2d 620 (1956).

#### Authority.

The authority of a city of first class to regulate the removing of houses does not give the city the authority to establish a building line. *City of Stuttgart v. Strait*, 212 Ark. 126, 205 S.W.2d 35 (1947).

#### Compensation.

The city may order unsanitary buildings or buildings injurious to the public health destroyed without compensation to the owner if necessary to abate the nuisance and protect the public health and safety. *Springfield v. City of Little Rock*, 226 Ark. 462, 290 S.W.2d 620 (1956).

## SUBCHAPTER 3 — ZONING REGULATIONS

#### SECTION.

14-56-301. Authority generally.

14-56-302. [Repealed.]

14-56-303. Height of buildings.

14-56-304. Setback lines in cities of the second class.

#### SECTION.

14-56-305. Conformance required — Exceptions.

**Effective Dates.** Acts 1905, No. 222, § 4: became law without Governor's signature, May 2, 1905.

Acts 1924 (3rd Ex. Sess.), No. 6, § 5: approved July 1, 1924. Emergency clause provided: "This act being necessary for the

immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1949, No. 312, § 2: Mar. 19, 1949.

## 14-56-301. Authority generally.

(a) Cities of the first and second class are authorized to establish zones limiting the character of buildings that may be erected therein.

(b) Zones may be of three (3) classes:

(1) Portions of the city where manufacturing establishments may be erected or conducted;

(2) Portions of the city where business other than manufacturing may be carried on; and

(3) Portions of the city set apart for residences.

**History.** Acts 1924 (3rd Ex. Sess.), No. 6, § 2; Pope's Dig., § 10056; Acts 1949, No. 312, § 1; A.S.A. 1947, § 19-2805.

**A.C.R.C. Notes.** Acts 1924 (3rd Ex. Sess.), No. 6, § 1, provided that the beauty of surroundings constitutes a valuable property right that should be protected by law, particularly residential sections where people have established their homes.

Acts 1961, No. 115, § 1, provided that any property used for commercial pur-

poses at or prior to the adoption of Acts 1929, No. 108 [repealed], that had been used continuously since that time for commercial purposes, together with any other contiguous property used for rental or commercial purposes regardless of the period of such use, upon application to the planning commission or governing body in a city of the first class, accompanied by an affidavit in support thereof, should be zoned for commercial use.

## CASE NOTES

### ANALYSIS

Constitutionality.

Appeals.

Businesses other than manufacturing.

Residential districts.

Zoning ordinances.

### Constitutionality.

This section is within the range of the power of this state to legislate for the protection of health and the general welfare and is not violative of the Fourteenth Amendment. *Herring v. Stannus*, 169 Ark. 244, 275 S.W. 321 (1924).

### Appeals.

Since there is generally no procedure to appeal the rezoning decisions of the cities, it is logical that either the chancery or circuit court would have jurisdiction to

hear complaints on this subject. *City of Conway v. Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979).

When a municipality takes action in zoning classifications, it is exercising a legislative function and is not subject to review by the courts of its wisdom in so doing; the role of the courts is simply to determine whether or not the action of the municipality is arbitrary. *City of Conway v. Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979).

Where a chancery court agreed with a city and rezoned certain land as commercial, it exceeded its authority, since the legislature only gave the rezoning power to city councils or the legislative body of a city. *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981).



### **Businesses Other Than Manufacturing.**

Where the city council granted the landowner a permit to use his lots for parking space and the property had been so used for some time, it was unnecessary for the landowner to petition to have such lots rezoned for business purposes, as such was the effect of the permit. *City of Little Rock v. Griffin*, 213 Ark. 465, 210 S.W.2d 915 (1948).

### **Residential Districts.**

When evidence showed that there were already in the immediate vicinity numerous businesses, it was not an abuse of discretion to permit a filling station to be erected in a residential district. *Herring v. Stannus*, 169 Ark. 244, 275 S.W. 321 (1924).

An ordinance regulating buildings used for business purposes in residence districts of the city is valid. *City of Little Rock v. Pfeifer*, 169 Ark. 1027, 277 S.W. 883 (1925).

Petition for rezoning was not arbitrarily denied where testimony clearly showed the house purchased in order to be converted to business purposes was in and surrounded by a residential district. *City of Little Rock v. Connerly*, 222 Ark. 196, 258 S.W.2d 881 (1953).

Residential property which is adjacent to business zoned property is not automatically entitled to rezoning as business property, and this fact is so even though the highest and best use of the property might be other than residential. *City of Conway v. Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979).

Where property owners purchased the property knowing that it was zoned single family, the city's refusal to rezone the property to apartment classification did not constitute a taking for public use without compensation and was not an unreasonable limitation placed upon the use of the property, since rezoning is not justified by the mere fact that the property owners seeking the rezoning would benefit economically if the rezoning was allowed, or that the land would be put to its most remunerative use. *McMinn v. City of Little Rock*, 275 Ark. 458, 631 S.W.2d 288 (1982).

### **Zoning Ordinances.**

Where a landowner obtained a permit for 90 days to violate a zoning ordinance, and refused to remove the building erected when notified, but brought a suit to enjoin the enforcement of the zoning ordinance, such action was dismissed because he had an adequate remedy at law and had not exhausted it. *City of Little Rock v. Evans*, 213 Ark. 522, 212 S.W.2d 28 (1948).

Failure of a city to comply with statutes in passing and putting into effect a zoning ordinance renders the ordinance invalid. *Searcy v. Roberson*, 224 Ark. 344, 273 S.W.2d 26 (1954).

**Cited:** *Arnold v. City of Jonesboro*, 227 Ark. 832, 302 S.W.2d 91 (1957); *Arkansas Release Guidance Found. v. Hummel*, 245 Ark. 953, 435 S.W.2d 774 (1969); *Baldrige v. City of N. Little Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975).

## **14-56-302. [Repealed.]**

**Publisher's Notes.** This section, concerning zoning authority outside corporate limits, was repealed by Acts 1987, No.

56, § 2. The section was derived from Acts 1969, No. 379, §§ 1-3; A.S.A. 1947, §§ 19-2804.1 — 19-2804.3.

## **14-56-303. Height of buildings.**

The city council of a city shall have power to pass ordinances limiting the height of buildings in the zones created by it, so that the beauty of monumental buildings may not be impaired by the contrast.

**History.** Acts 1924 (3rd Ex. Sess.), No. 6, § 4; Pope's Dig., § 10058; A.S.A. 1947, § 19-2807.

## CASE NOTES

**Constitutionality.**

This section is within the range of the power of the state to legislate for the protection of health and the general welfare and is not violative of the Fourteenth

Amendment. *Herring v. Stannus*, 169 Ark. 244, 275 S.W. 321 (1924).

**Cited:** *Baldrige v. City of N. Little Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975).

**14-56-304. Setback lines in cities of the second class.**

(a)(1) Upon the petition of a majority of the owners of lots, or parts thereof, in any district comprising one (1) or more blocks fronting on any residential street in any city of the second class, the city council shall have the power to prohibit, by ordinance, the use of the front part of the lots, for the distance of two-thirds ( $\frac{2}{3}$ ) of the depth thereof from the street, for stables, barns, or other outhouses, or for stock lots.

(2) Persons already so using such property shall have six (6) months in which to remove such buildings or discontinue such use.

(b)(1) The petitions and ordinance mentioned in subsection (a) of this section shall set forth the metes and bounds of the proposed district, which shall include both sides of the residential street, not to exceed one-half ( $\frac{1}{2}$ ) the distance through the block.

(2) It shall be immaterial in what part of the proposed district the petitioners' property lies, so that the petition contains a majority of all property owners in the district.

(c) The continued occupancy of these lots by the owner contrary to the terms of an ordinance, when duly passed, shall constitute a public nuisance. The owner or proprietor of them shall, upon conviction, be fined in any sum not less than five dollars (\$5.00) and not to exceed fifteen dollars (\$15.00) per day for the continued violation thereof.

**History.** Acts 1905, No. 222, §§ 1-3, p. Dig., §§ 9816-9818; A.S.A. 1947, §§ 19-562; C. & M. Dig., §§ 7687-7689; Pope's 2808 — 19-2810.

**14-56-305. Conformance required — Exceptions.**

(a)(1) When the city council shall have laid off zones, it shall not be lawful for anyone to construct or carry on within a given zone any business not authorized by the ordinance of the city establishing it, unless with special permission granted by the council of the city, or by a commission which it may create for the purpose of determining whether an exception shall be made, in the particular instance.

(2) Exceptions shall be made only for good cause.

(b) In case of abuse, the adjacent property owners shall have the right to appeal to the courts of chancery to protect their property from depreciation by reason of the setting up of exceptional business within the zone.

**History.** Acts 1924 (3rd Ex. Sess.), No. 6, § 3; Pope's Dig., § 10057; A.S.A. 1947, § 19-2806.

## CASE NOTES

## ANALYSIS

Constitutionality.

Appeals.

Exceptions for good cause.

Nonconforming uses.

**Constitutionality.**

This section is within the range of the power of the state to legislate for the protection of health and the general welfare and is not violative of the Fourteenth Amendment. *Herring v. Stannus*, 169 Ark. 244, 275 S.W. 321 (1924).

**Appeals.**

An unreasonable and arbitrary building restriction, constituting an abuse of discretion by a city council, is void, and an aggrieved property owner is entitled to relief in equity whether provision is made therefor in the statute or ordinance or not. *City of Little Rock v. Pfeifer*, 169 Ark. 1027, 277 S.W. 883 (1925).

Since there is generally no procedure to appeal the rezoning decisions of the cities, it is logical that either the chancery or circuit court would have jurisdiction to hear complaints on this subject. *City of Conway v. Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979).

When a municipality takes action in zoning classifications, it is exercising a legislative function and is not subject to review by the courts of its wisdom in so doing; the role of the courts is simply to determine whether or not the action of the municipality is arbitrary. *City of Conway v. Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979).

**Exceptions for Good Cause.**

Residentially zoned property which

happened to be adjacent to established business zoned property was not automatically entitled to rezoning as business property as a matter of law where owner's requested rezoning was first attempt to invade for business purposes a residential zone. *Baldrige v. City of N. Little Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975).

Residential property which is adjacent to business zoned property is not automatically entitled to rezoning as business property, and this fact is so even though the highest and best use of the property might be other than residential. *City of Conway v. Housing Auth.*, 266 Ark. 404, 584 S.W.2d 10 (1979).

**Nonconforming Uses.**

When city council passes an ordinance creating a city planning commission, vested with the authority to grant permits for nonconforming uses, the discharge of those duties by the commission is not repugnant to the council's reserved power to issue building permits. *Economy Whsle. Co. v. Rodgers*, 232 Ark. 835, 340 S.W.2d 583 (1960).

A "halfway" house for the temporary lodging, counseling, guidance, and employment placement of convicts released on pardon or parole or upon completion of their sentences, operated by a nonprofit organization, was not a religious, educational, or philanthropic institution within the meaning of a city ordinance providing for permits for such institutions in residential areas as nonconforming uses. *Arkansas Release Guidance Found. v. Hummel*, 245 Ark. 953, 435 S.W.2d 774 (1969).

## SUBCHAPTER 4 — MUNICIPAL PLANNING

## SECTION.

14-56-401. Construction.

14-56-402. Authority generally.

14-56-403. Purpose of plans.

14-56-404. Planning commission created.

14-56-405. Appointment of members.

14-56-406. Commission officers.

14-56-407. Meetings of commission.

14-56-408. Rules and regulations.

## SECTION.

14-56-409. Compensation of members.

14-56-410. Appropriations.

14-56-411. Purpose of commission.

14-56-412. Powers and duties of commission.

14-56-413. Territorial jurisdiction.

14-56-414. Preparation of plans.

14-56-415. Plan recommendations.



## SECTION.

- 14-56-416. Zoning ordinance.
- 14-56-417. Regulations to control development of land.
- 14-56-418. Setback ordinance.
- 14-56-419. Control of road entry.
- 14-56-420. Adoption and amendment procedures.
- 14-56-421. Enforcement of ordinances and regulations.

## SECTION.

- 14-56-422. Adoption of plans, ordinances, and regulations.
- 14-56-423. Change in plans, etc.
- 14-56-424. Existing plans, etc.
- 14-56-425. Appeals to circuit court.
- 14-56-426. Control of property use — Proximity to military installation.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 14-56-401 — 14-56-425 may not apply to § 14-56-426 which was enacted subsequently.

**Effective Dates.** Acts 1963, No. 36, § 3: Feb. 8, 1963. Emergency clause provided: “It is hereby found and determined by the General Assembly that the population of this State has shifted from primarily rural population to urban population; that the growth of urban population is expected to increase at a rapid pace; that many incorporated towns in this State are experiencing a rapid increase in population growth; that many of such incorporated towns do not have plans for public improvements, land use, community facilities and other factors that must be anticipated with increased population growth; that the present laws of this State do not authorize incorporated towns to establish planning agencies; and, that the immediate passage of this Act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1965, No. 138, § 2: Mar. 2, 1965. Emergency clause provided: “It has been found and declared by the General Assembly that there is conflict and uncertainty as to the respective powers of cities and counties relative to planning under Act 186, Ark. Acts of 1957, as amended; that this has resulted in great confusion and frustration of the purposes of the aforesaid Act to the detriment of both private and public interests; that the aforesaid conflict demands immediate resolutions and the aforesaid uncertainty demands immediate clarification; and that enactment of this measure will provide an appropriate remedy. Therefore, an emer-

gency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval.”

Acts 1967, No. 66, § 3: Feb. 9, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 186 of 1957, as amended, provides that members of the Municipal Planning Commissions shall receive no compensation for attendance at commission meetings, and that in many instances members of said commissions are required to devote time to attend such meetings which works undue hardships upon such members, and that the immediate passage of this Act is necessary in order that cities or towns may, if they so desire, authorize the payment of compensation to Planning Commission members for attendance at commission meetings. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 56, § 5: Feb. 18, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that Arkansas cities of 8,000 or more population along navigable streams must have the authority to plan and control for orderly growth outside their corporate limits to preserve the quality of life for all citizens. Therefore, an emergency is hereby declared to exist and this Act shall be in full force on the date of enactment.”

Acts 1995, No. 530, § 9: Mar. 6, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is an immediate need for Arkansas cities wherein air force facilities are located to enact land use ordi-

nances to provide for the health and safety of the residents of the area and this act so provides and should go into effect immediately. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**Ark. L. Notes.** Gitelman, Time to Pay the Pfeifer: Arkansas Inches Closer to Giving Legal Effect to Comprehensive Planning, 1995 Ark. L. Notes 51.

**UALR L.J.** Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 UALR L.J. 279.

### CASE NOTES

#### Implementation.

The city can follow one or two courses in implementing this subchapter: (1) The city can secure the approval of the county court to its projected plans; in such event it seems that all questions of jurisdictional encroachment would be eliminated; or (2) it can proceed without the county court's approval; in this event it is possible

that the county court will never attempt to exert any jurisdiction it may have in internal improvement matters in conflict with city plans, but the city would be taking the calculated risk. *Butler v. City of Little Rock*, 231 Ark. 834, 332 S.W.2d 812 (1960).

**Cited:** *City of Little Rock v. Pfeifer*, 318 Ark. 679, 887 S.W.2d 296 (1994).

#### 14-56-401. Construction.

This subchapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

**History.** Acts 1957, No. 186, § 8; A.S.A. 1947, § 19-2831.

### CASE NOTES

**Cited:** *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

#### 14-56-402. Authority generally.

Cities of the first and second class and incorporated towns shall have the power to adopt and enforce plans for the coordinated, adjusted, and harmonious development of the municipality and its environs.

**History.** Acts 1957, No. 186, § 1; 1963, No. 36, § 1; A.S.A. 1947, § 19-2825.

## CASE NOTES

## ANALYSIS

Conflict of jurisdiction.  
Nature of authority.  
Rezoning power.

**Conflict of Jurisdiction.**

Where there is a conflict over the exercise of jurisdiction over roads in an unincorporated portion of the county, between the county court and any creature of the legislature, the latter must give way. *Butler v. City of Little Rock*, 231 Ark. 834, 332 S.W.2d 812 (1960).

**Nature of Authority.**

A municipal corporation's exercise of its zoning power is the equivalent of an act by the General Assembly. *City of Lowell v. M & N Mobile Home Park*, 323 Ark. 332, 916 S.W.2d 95 (1996).

**Rezoning Power.**

Where a chancery court agreed with a city and rezoned certain land as commercial, it exceeded its authority, since the legislature only gave the rezoning power to city councils or the legislative body of a city. *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981).

**Cited:** *Baldrige v. City of N. Little Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975); *McMinn v. City of Little Rock*, 275 Ark. 458, 631 S.W.2d 288 (1982); *Potocki v. City of Ft. Smith*, 279 Ark. 19, 648 S.W.2d 462 (1983); *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983); *Mings v. City of Ft. Smith*, 288 Ark. 42, 701 S.W.2d 705 (1986).

**14-56-403. Purpose of plans.**

(a) The plans of the municipality shall be prepared in order to promote, in accordance with present and future needs, the safety, morals, order, convenience, prosperity, and general welfare of the citizens.

(b) The plans may provide, among other things, for:

- (1) Efficiency and economy in the process of development;
- (2) The appropriate and best use of land;
- (3) Convenience of traffic and circulation of people and goods;
- (4) Safety from fire and other dangers;
- (5) Adequate light and air in the use and occupancy of buildings;
- (6) Healthful and convenient distribution of population;
- (7) Good civic design and arrangement;
- (8) Adequate public utilities and facilities; and
- (9) Wise and efficient expenditure of funds.

**History.** Acts 1957, No. 186, § 1; 1963, No. 36, § 1; A.S.A. 1947, § 19-2825.

## CASE NOTES

**In General.**

The land use plan is plainly not a zoning ordinance. It is merely a broad declaration of policy, specifying in a general way the uses to which the land in and near the city is now being put and to which it may be put in the future. The plan does not contain exact descriptions so that the property owner may ascertain what restrictions are being placed upon his land. The

land use plan contains none of the details that are essential to a zoning ordinance. *Economy Whsle. Co. v. Rodgers*, 232 Ark. 835, 340 S.W.2d 583 (1960).

**Cited:** *Baldrige v. City of N. Little Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975); *McMinn v. City of Little Rock*, 275 Ark. 458, 631 S.W.2d 288 (1982); *Potocki v. City of Ft. Smith*, 279 Ark. 19, 648 S.W.2d 462 (1983); *City of Fayetteville v. IBI, Inc.*,



280 Ark. 484, 659 S.W.2d 505 (1983);  
Mings v. City of Ft. Smith, 288 Ark. 42,  
701 S.W.2d 705 (1986).

#### **14-56-404. Planning commission created.**

(a) The legislative body of the municipality may create a planning commission of not less than five (5) members, of whom at least two-thirds ( $\frac{2}{3}$ ) shall not hold any other municipal office or appointment except membership in the board of adjustment or a joint planning agency.

(b) The legislative body may confer on the commission the powers necessary to carry out the municipal plan.

**History.** Acts 1957, No. 186, § 1; 1963,  
No. 36, § 1; A.S.A. 1947, § 19-2825.

#### **CASE NOTES**

##### **Authority.**

The legislature has the authority to create city planning boards and to provide rules and regulations for their government. *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941) (decision under prior law).

*Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975); *McMinn v. City of Little Rock*, 275 Ark. 458, 631 S.W.2d 288 (1982); *Potocki v. City of Ft. Smith*, 279 Ark. 19, 648 S.W.2d 462 (1983); *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983); *Mings v. City of Ft. Smith*, 288 Ark. 42, 701 S.W.2d 705 (1986).

**Cited:** *Baldrige v. City of N. Little*

#### **14-56-405. Appointment of members.**

Appointment and terms of the members of the planning commission shall be as provided by city ordinance.

**History.** Acts 1957, No. 186, § 2;  
A.S.A. 1947, § 19-2826.

#### **14-56-406. Commission officers.**

(a) The planning commission shall designate one (1) of its members as chairman and select a vice chairman and such other officers as it may require.

(b) The terms of office of the chairman and other officers of the commission shall be as provided by the rules of the planning commission.

**History.** Acts 1957, No. 186, § 2;  
A.S.A. 1947, § 19-2826.

**14-56-407. Meetings of commission.**

(a) Regular meeting dates shall be established providing for at least one (1) regular meeting to be held in each quarter of each calendar year.

(b) The commission shall keep a public record of all business, resolutions, transactions, findings, and determinations.

**History.** Acts 1957, No. 186, § 2;  
A.S.A. 1947, § 19-2826.

**14-56-408. Rules and regulations.**

The planning commission shall adopt rules and regulations for the discharge of its duties and the transaction of business.

**History.** Acts 1957, No. 186, § 2;  
A.S.A. 1947, § 19-2826.

**14-56-409. Compensation of members.**

The members of the municipal planning commissions established pursuant to the provisions of this subchapter shall be entitled to receive such compensation, if any, for attendance at commission meetings as may be authorized by an ordinance duly adopted by the governing body of the city.

**History.** Acts 1967, No. 66, § 1; A.S.A.  
1947, § 19-2833.

**14-56-410. Appropriations.**

The municipality is authorized to appropriate funds to the planning commission to be used in carrying out its functions.

**History.** Acts 1957, No. 186, § 1; 1963,  
No. 36, § 1; A.S.A. 1947, § 19-2825.

**CASE NOTES**

**Cited:** *Baldrige v. City of N. Little Rock*, 258 Ark. 246, 523 S.W.2d 912 (1975); *McMinn v. City of Little Rock*, 275 Ark. 458, 631 S.W.2d 288 (1982); *Potocki v. City of Ft. Smith*, 279 Ark. 19, 648 S.W.2d 462 (1983); *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983); *Mings v. City of Ft. Smith*, 288 Ark. 42, 701 S.W.2d 705 (1986).

**14-56-411. Purpose of commission.**

The general purpose of the planning commission is to:

- (1) Prepare, or have prepared, a plan of the municipality;
- (2) Receive and make recommendations on public and private proposals for development;
- (3) Prepare and administer planning regulations;
- (4) Prepare and transmit to the legislative body recommended ordinances implementing plans; and

(5) Advise and counsel the city government and other public bodies.

**History.** Acts 1957, No. 186, § 3;  
A.S.A. 1947, § 19-2827.

### CASE NOTES

#### ANALYSIS

Public buildings.  
Rezoning.

#### Public Buildings.

Cities, in certain instances, have the authority to regulate some features relating to public buildings. Where the ordinance is not before the reviewing court, the court cannot make a sweeping finding that the municipality cannot regulate, in any manner, any phase, aspect, or feature relating to the construction of a public school building. *Lavender v. Rogers*, 232 Ark. 673, 339 S.W.2d 598 (1960); *Lavender v. Rogers*, 233 Ark. 161, 343 S.W.2d 103 (1961).

#### Rezoning.

Failure of the planning commission to give sufficient notice of their hearing on a

petition for rezoning and denying request of an objector for a continuance of prior scheduling of oral surgery were not rendered immaterial by the fact that the objector was subsequently heard before the city board of directors and the chancery court. *Wenderoth v. Freeze*, 248 Ark. 469, 452 S.W.2d 328 (1970).

Where a previously adopted city ordinance prohibited consideration of the same property for rezoning within a year of prior rejection, the city board of directors erred when it allowed the rezoning of two lots just three months after a rezoning petition, which included those same two lots, had been rejected. *Potocki v. City of Ft. Smith*, 279 Ark. 19, 648 S.W.2d 462 (1983).

**Cited:** *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983).

### 14-56-412. Powers and duties of commission.

(a) **GENERALLY.** The planning commission shall have the duty and function of promoting public interest in, and understanding of, the long-term coordinated municipal planning.

(b) **COMPREHENSIVE STUDIES.** The commission shall prepare a work program and make comprehensive studies of the present conditions and the probable future growth of the municipality and its neighboring territory.

(c) **PLANNING AREA MAP.** The commission shall prepare and maintain a map showing the general location of streets, public ways, and public property and the boundaries of the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations. The map shall be known as the planning area map.

(d) **PLANS OF AREA.** Following preparation of the planning area map, the planning commission may prepare plans for all, or any portion of, the area encompassed by the map, which may consist of maps, plats, charts, diagrams, and necessary documents and descriptive matter. The plans may include, but shall not be limited to:

- (1) A master street plan;
- (2) A land use plan; and
- (3) A community facilities plan.

(e) **IMPLEMENTATION OF PLANS.** In order to promote, regulate, and control development, and to protect the various elements of the plans, the



commission, after adoption of appropriate plans as provided, may prepare and transmit to the legislative body such ordinances and regulations as are deemed necessary to carry out the intent of the plans, or of parts thereof.

(f)(1) REFERRAL TO PLANNING COMMISSION. After adoption and filing as provided of a plan, no public way, ground, or open space; public building or structure; publicly or privately owned public utility line or terminal or transportation line or terminal; or public development or redevelopment or renewal project shall be acquired, constructed, or authorized unless such a project, proposal, or development has been submitted to the commission for review, recommendation, and approval as to its conformity with the plan.

(2) The commission's disapproval of a proposal submitted to it may be overruled only by a recorded vote of two-thirds ( $\frac{2}{3}$ ) of the full membership of the submitting or authorizing body.

(3) Failure of the commission to act within sixty (60) days of the submission of the proposal shall be deemed approval unless further time is allowed by the submitting public board, commission, or body.

(g) REFERRAL TO BODIES RESPONSIBLE FOR LAND ACQUISITION. After adoption and filing as provided of a community facilities plan or a master street plan, no parcel of land indicated by the plan which lies within the bounds of a proposed public use facility or mapped street shall be privately developed until the public board, commission, or body having jurisdiction or financial responsibility for the reserved area shall have refused to execute a written option or to file suit for condemnation to acquire the area. This refusal shall be given by the public board, commission, or body within one (1) year of the date the action is requested by the property owner. This procedure may be enforced for the specified one (1) year period by the refusal to issue building permits or by other methods. However, it may be enforced only in cases where regulations governing the development and subdivision of land do not apply.

(h) PUBLIC IMPROVEMENT PROGRAM. The commission may prepare, annually, a program for an appropriate period, recommending a coordinated program of capital expenditures for public improvements. For the purpose of preparing this program, the commission may request and receive information concerning public improvements from all public officials and public bodies.

(i) RECOMMENDATIONS AND REPORTS. The commission may make recommendations and reports to the public and to public and private agencies.

(j) SURVEYS. The commission may enter upon land to make examinations and surveys and to maintain necessary monuments and markers thereon.

(k) FUNDS AND PERSONNEL. The commission may receive and spend funds from federal, state, county, municipal, and other public and private sources, may contract with respect thereto, and may hire a staff and contract for consultant services.

**History.** Acts 1957, No. 186, § 3;  
A.S.A. 1947, § 19-2827.

### CASE NOTES

#### **Compensation.**

This section contemplates purchase or condemnation of land by the city, and in either case, the owner is to be compensated by money rather than waiver of some safety regulation, such as a fire wall

requirement, completely irrelevant to the acquisition of land to widen a street. *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

**Cited:** *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983).

#### **14-56-413. Territorial jurisdiction.**

(a)(1)(A) The territorial jurisdiction of the legislative body of the city having a planning commission, for the purpose of this subchapter, shall be exclusive and shall include all land lying within five (5) miles of the corporate limits.

(B) If the corporate limits of two (2) or more municipalities of the first or second class are less than ten (10) miles apart, the limits of their respective territorial jurisdictions shall be a line equidistant between them, or as agreed on by the respective municipalities.

(2)(A) Cities now having eight thousand (8,000) population or more and situated on navigable streams shall have the authority to administer and enforce planning and zoning ordinances outside their corporate limits as follows:

(i) For cities of eight thousand (8,000) to fifty thousand (50,000) population, the jurisdictional area will be one (1) mile beyond the corporate limits;

(ii) For cities of fifty thousand (50,000) to one hundred fifty thousand (150,000) population, the jurisdictional area will be two (2) miles beyond the corporate limits;

(iii)(a) For cities of one hundred fifty thousand (150,000) population and over, the jurisdictional area will be three (3) miles beyond the corporate limits.

(b) Upon July 3, 1989, no city with a population in excess of one hundred fifty thousand (150,000) persons and which is situated on a navigable stream shall exercise any zoning authority outside the boundaries of the county wherein it is located without the approval of the quorum court of the county wherein the city is not located and the approval of the governing bodies of all other cities having zoning authority over the area.

(B) The city populations will be based on the latest available United States census data.

(C) The provisions of subdivision (a)(2) of this section shall not restrict the powers of any city currently exercising the authority authorized under this subdivision.

(b)(1) The planning commission shall designate the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations.

(2) A description of the boundaries of the area shall be filed with the city clerk and with the county recorder.

**History.** Acts 1957, No. 186, §§ 3, 5; A.S.A. 1947, §§ 19-2827, 19-2829; Acts 1965, No. 134, § 1; 1965, No. 138, § 1; 1987, No. 56, §§ 1, 4; 1989, No. 94, § 1.

#### CASE NOTES

**Cited:** National Lumber Co. v. Advance Dev. Corp., 293 Ark. 1, 732 S.W.2d 840 (1987).

#### 14-56-414. Preparation of plans.

(a) **STUDIES.** The planning commission shall undertake suitable studies related to the plans to be prepared. The studies shall be conducted after the completion of the planning area map and prior to the preparation of the plans.

(b)(1) **LAND USE PLAN.** The commission may prepare and adopt a land use plan which may include, but shall not be limited to:

(A) The reservation of open spaces;

(B) The preservation of natural and historical features, sites, and monuments;

(C) The existing uses to be retained without change;

(D) The existing uses proposed for change; and

(E) The areas proposed for new development.

(2) The plan may include areas proposed for redevelopment, rehabilitation, renewal, and similar programs.

(c)(1) **COMMUNITY FACILITIES PLAN.** The commission may prepare and adopt a community facilities plan indicating the general location and extent of the service areas of, and the future requirements of:

(A) Community facilities such as schools, playgrounds, recreational areas, hospitals, special education facilities, and cultural facilities;

(B) Governmental buildings and areas;

(C) Public and private utility terminals and lines; and

(D) Transportation terminals and lines.

(2) The plan may indicate areas to be reserved for future public acquisition as provided in this subchapter.

(d)(1) **MASTER STREET PLAN.** The commission may prepare and adopt a master street plan which shall designate the general location, characteristics, and functions of streets and highways.

(2)(A) The plan shall include the general locations of streets and highways to be reserved for future public acquisition.

(B) The plan may provide for the removal, relocation, widening, narrowing, vacating, abandonment, and change of use or extension of any public ways.

(e) **OTHER PLANS.** The commission may prepare and adopt such other plans as are significant to the health, safety, and general welfare of the municipality and its environs.



**History.** Acts 1957, No. 186, § 4; A.S.A. 1947, § 19-2828.

### CASE NOTES

#### ANALYSIS

Community facilities plans.  
Land use plans.

#### Community Facilities Plans.

Where a city's comprehensive land use and public facilities plan was nothing more than a statement of broad possibilities for the future, the city was not justified in exacting cash contributions from private developers for future establishment of park areas when no location for any future park had been determined, and there was apparently no way of determining when, if ever, the contributed money would be spent, or where, other than in the district, or for what, except as the planning commission might eventually decide. *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983).

#### Land Use Plans.

The land use plan is plainly not a zoning ordinance. It is merely a broad declaration of policy, specifying in a general way the

uses to which the land in and near the city is now being put and to which it may be put in the future. The plan does not contain exact descriptions so that the property owner may ascertain what restrictions are being placed upon his land. The land use plan contains none of the details that are essential to a zoning ordinance. *Economy Whsle. Co. v. Rodgers*, 232 Ark. 835, 340 S.W.2d 583 (1960).

Where a plan was accepted by the city as a "land use" guide and the plan included a "land use plan" which included policy statements, general design considerations, proposed land uses, and projections as to future land use needs, this sufficed for compliance with this section. *Taylor v. City of Little Rock*, 266 Ark. 384, 583 S.W.2d 72 (1979).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *City of Fayetteville v. IBI, Inc.*, 280 Ark. 484, 659 S.W.2d 505 (1983).

### 14-56-415. Plan recommendations.

Following the adoption and filing of any plan, the planning commission may transmit to the legislative body, for enactment, recommended ordinances and regulations which will carry out or protect the various elements of the plan.

**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829.

### RESEARCH REFERENCES

**Ark. L. Notes.** Gitelman, Time to Pay the Pfeifer: Arkansas Inches Closer to Giving Legal Effect to Comprehensive Planning, 1995 Ark. L. Notes 51.

### CASE NOTES

#### Acceptance.

The insertion of the word "adopt" into the resolution accepting the plan as a land use guide is not a necessary prerequisite for compliance with this section; certainly, use of the word "accepts" falls within the spirit of the law. *Taylor v. City of Little*

*Rock*, 266 Ark. 384, 583 S.W.2d 72 (1979).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987).

**14-56-416. Zoning ordinance.**

(a)(1) Following adoption and filing of the land use plan, the commission may prepare for submission to the legislative body a recommended zoning ordinance for the entire area of the municipality.

(2) The ordinance shall consist of both a map and a text.

(3)(A) The ordinance may regulate the location, height, bulk, number of stories, and size of buildings; open space; lot coverage; density and distribution of population; and the uses of land, buildings, and structures.

(B) The ordinance may require off-street parking and loading.

(C) The ordinance may provide for districts, of compatible uses, for large scale unified development, for elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety, and general welfare of the municipality.

(D) The ordinance shall include provisions for administration and enforcement.

(E)(i) The ordinance shall designate districts or zones of such shape, size, or characteristics as deemed advisable.

(ii) The regulations imposed within each district or zone shall be uniform throughout the district or zone.

(b)(1) The ordinance shall provide for a board of zoning adjustment, which may either be composed of at least three (3) members, or the commission as a whole may sit as the board of zoning adjustment.

(2) The board shall have the following functions:

(A) Hear appeals from the decision of the administrative officers in respect to the enforcement and application of the ordinance, and may affirm or reverse, in whole or in part, the decision of the administrative officer;

(B)(i)(a) Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.

(b) The board shall not permit, as a variance, any use in a zone that is not permitted under the ordinance.

(c) The board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

(ii) Decisions of the board in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

(3)(A) The board shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum and procedure, and keep a public record of all findings and decisions.

(B) Each session of the board shall be a public meeting with public notice of the meeting and business to be carried on published in a newspaper of general circulation in the city, at least one (1) time seven (7) days prior to the meeting.

(c) The ordinance shall be observed through denial of the issuance of building permits and use permits.

**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829.

## CASE NOTES

### ANALYSIS

Appeals.

Building permits.

Compliance with section.

Location, etc., of buildings.

Nonconforming uses.

Rezoning.

Variances.

Zoning map.

### Appeals.

This section provides no limitations as to persons or entities which may bring an appeal, and a city had standing to appeal from the order of its board of zoning adjustment reinstating a building permit. *City of Paragould v. Leath*, 266 Ark. 390, 583 S.W.2d 76 (1979).

In spite of the language of *Wenderoth v. City of Fort Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971), which held § 14-56-425 unconstitutional when applied to allow de novo review of zoning or rezoning ordinances enacted by city legislative bodies, the provision of this section requiring appeals to a court of record from actions of a board of zoning adjustment is not subject to the constitutional limitations applicable to city council zoning actions because the board of adjustment acts administratively, not legislatively; appeals to the circuit court from the board of adjustment are permitted. *City of Paragould v. Leath*, 266 Ark. 390, 583 S.W.2d 76 (1979).

### Building Permits.

A city cannot test the validity of a building permit issued by its own agency by collaterally attacking its correctness in an original injunctive proceeding in chancery court. *City of Paragould v. Leath*, 266 Ark. 390, 583 S.W.2d 76 (1979).

### Compliance with Section.

Compliance with subdivision (a)(2) is mandatory, and failure to comply with it will render a zoning ordinance void. *Osborne v. City of Camden*, 301 Ark. 420, 784 S.W.2d 596 (1990); *Brooks v. City of*

*Benton*, 308 Ark. 571, 826 S.W.2d 259 (1992).

### Location, Etc., of Buildings.

The board of adjustment is vested with the power and authority to permit the enlargement of a building. *Williams v. Kuehnert*, 243 Ark. 746, 421 S.W.2d 896 (1967).

### Nonconforming Uses.

A board of adjustment was justified in authorizing the enlargement of a kindergarten being operated in a residential district as a pre-existing nonconforming use of the property by the fact that the health department required such enlargement as a condition to the continued operation of the kindergarten. *Williams v. Kuehnert*, 243 Ark. 746, 421 S.W.2d 896 (1967).

Where the local zoning ordinance required the board of adjustment to permit the location of an educational use in a district where such use was otherwise prohibited, it was not necessary for the property owner to show undue hardship to obtain authority from the board to enlarge a kindergarten being operated in a residential district as a preexisting nonconforming use. *Williams v. Kuehnert*, 243 Ark. 746, 421 S.W.2d 896 (1967).

### Rezoning.

Where a previously adopted city ordinance prohibited consideration of the same property for rezoning within a year of prior rejection, the city board of directors erred when it allowed the rezoning of two lots just three months after a rezoning petition, which included those same two lots, had been rejected. *Potocki v. City of Ft. Smith*, 279 Ark. 19, 648 S.W.2d 462 (1983).

### Variances.

In an appeal by an association of property owners of real estate in several contiguous subdivisions from a decision of the board of zoning adjustment denying a



variation to permit the association to construct and operate a swimming pool and recreation area in the community for the use of residents thereof, testimony of real estate salesman that lots in subdivisions containing such facilities brought higher prices and of another witness that he could not conceive of a situation where such facilities properly constructed and operated would lessen the value of surrounding property were sufficient to sustain the circuit court's decision granting the variance. *City of Little Rock v. Leawood Property Owners' Ass'n*, 242 Ark. 451, 413 S.W.2d 877 (1967).

Evidence that the owner of an office building did not have adequate parking space for his tenants and had acquired two vacant lots nearby was sufficient to support his request for a variance to permit additions to the building and the establishment of a parking lot on the two vacant lots and to sustain the trial court's finding that strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration. *City of Little Rock v. Kaufman*, 249 Ark. 530, 460 S.W.2d 88 (1970).

Where the board of adjustment produced expert testimony to the effect that release of traffic from the lot onto the

street would threaten the residential character of the neighborhood to the north, and where the director of comprehensive planning and the former director both testified that the original variance had created problems for the city, and that the granting of the variance requested would not alleviate the problem and would, instead, have a substantially adverse effect on the residential neighborhood to the north, this testimony clearly constituted substantial evidence to support the denial of the zoning variance. *Deboha II v. Summerlin*, 266 Ark. 1037, 589 S.W.2d 206 (Ct. App. 1979).

### **Zoning Map.**

The purpose of the map requirement is to give notice of a zoning proposal so that, before adoption, residents may object or make suggestions, and after adoption, purchasers and users may acquaint themselves with the zoning restrictions. *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W.2d 259 (1992).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987); *Kennedy v. Papp*, 294 Ark. 88, 741 S.W.2d 625 (1987).

## **14-56-417. Regulations to control development of land.**

(a)(1) Following adoption and filing of a master street plan, the commission may prepare and shall administer, after approval of the legislative body, regulations controlling the development of land.

(2) The development of land includes, but is not limited to:

(A) The provision of access to lots and parcels;

(B) The extension or provision of utilities;

(C) The subdividing of land into lots and blocks; and

(D) The parceling of land resulting in the need for access and utilities.

(b)(1) The regulations controlling the development of land may establish or provide for the minimum requirements as to:

(A) Information to be included on the plat filed for record;

(B) The design and layout of the subdivision, including standards for lots and blocks, street rights-of-way, street and utility grades, and other similar items; and

(C) The standards for improvements to be installed by the developer at his own expense such as street grading and paving; curbs, gutters, and sidewalks; water, storm and, sewer mains; street lighting; and other amenities.

(2)(A) The regulations may permit the developer to post a performance bond in lieu of actual installation of required improvements before plat approval.

(B) They may provide for the dedication of all rights-of-way to the public.

(3)(A) The regulations may govern lot or parcel splits, which is the dividing of an existing lot or parcel into two (2) or more lots or parcels.

(B) No deed or other instrument of transfer shall be accepted by the county recorder for record unless the deed or other instrument of transfer is to a lot or parcel platted and on file or accompanied with a plat approved by the commission.

(4) The regulations shall establish the procedure to be followed to secure plat approval by the commission.

(5)(A) The regulations shall require the developer to conform to the plan currently in effect.

(B)(i) The regulations may require the reservation, for future public acquisition of land for community or public facilities indicated in the plan.

(ii) This reservation may extend over a period of not more than one (1) year from the time the public body responsible for the acquisition of reserved land is notified of the developer's intent.

(6) When a proposed subdivision does not provide areas for a community or public facility based on the plans in effect, the regulations may provide for reasonable dedication of land for such public or community facilities, or for a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition of facilities that serve the subdivision.

(c) Within the area within which the municipality intends to exercise its territorial jurisdiction as indicated on the planning area map, the county recorder shall not accept any plat for record without the approval of the planning commission.

**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829.

## RESEARCH REFERENCES

**Ark. L. Rev. Note,** *Dolan v. City of Tigard: Paving New Bicycle Paths Through the Thickets of the Fifth Amendment's Takings Clause*, 48 Ark. L. Rev. 823.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Construction.

Plats filed for record.

### Constitutionality.

This section is not unconstitutional per

se. *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

#### **Construction.**

The "development of land" contemplated in subdivisions (a)(2)(A) through (D) of this section has to do with land which is not yet developed. *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

#### **Plats Filed for Record.**

In mandamus proceeding to compel circuit clerk to record plat not approved by city planning board because of refusal to dedicate additional strips for roads, court was held not authorized, without any evidence and without any claim that the board acted arbitrarily, to set aside its judgment. *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941) (decision under prior law).

In mandamus proceedings to compel circuit clerk to record plat not approved by city planning board because of refusal to dedicate additional strips for roads, trial court's holding that action of the board was unauthorized because no provision

was made for compensation to the landowner was held erroneous. *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941) (decision under prior law).

Approval of bill of assurance and plat of subdivision by planning commission did nothing more than entitle the owner to place them of record, and such approval did not operate to confer standing upon landowners outside the subdivision to enforce the bill of assurance. Cases holding that owners of nearby property may challenge changes in zoning, even though they own no property in the rezoned area, have no applicability where it does not appear that there was any zoning of the subdivision in question. *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987); *Kennedy v. Papp*, 294 Ark. 88, 741 S.W.2d 625 (1987).

### **14-56-418. Setback ordinance.**

When a master street plan has been adopted and filed as provided, the legislative body of the city, upon recommendation of the commission, may enact ordinances establishing setback lines on such streets and highways as are designated by the plan and may prohibit the establishment of any new structure or other improvements within the setback lines.

**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829; Acts 1991, No. 620, § 1.

#### **CASE NOTES**

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987).

### **14-56-419. Control of road entry.**

Following the adoption and filing of a master street plan as provided, the legislative body, upon recommendation of the commission, may enact ordinances providing for the control of entry into any of the major streets and highways shown in the plan.



**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829.

### CASE NOTES

#### **Controlled Access Highways.**

In determining amount of compensation due to landowners whose property was condemned for a service road along a controlled access highway, § 27-68-101 et seq., governing controlled access facilities, and not this section, were applicable. Accordingly, a city ordinance requiring the owner and developer of land abutting a controlled access highway to construct a service road at his own expense and dedicate it to the city was in conflict with the controlling statutes and would constitute a taking of private property without due process in violation of Ark. Const., Art. 2, § 22. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

This section deals exclusively and comprehensively with subdivisions across the state, while § 27-68-101 et seq. address

themselves to controlled access facilities as defined in these provisions; a subdivision is not a controlled access facility, even though it may abut one and it does not appear inconsistent considering the separate purposes of the statutory provisions that a developer should receive compensation for giving up a right-of-way along a controlled access facility while having to relinquish title and control of the streets within a subdivision without being compensated. *Calabria v. City of Fayetteville*, 277 Ark. 489, 644 S.W.2d 249 (1982).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987).

#### **14-56-420. Adoption and amendment procedures.**

Any of the recommended ordinances and regulations that may be prepared by the commission shall be adopted or amended only in conformance with procedures specified in § 14-56-422.

**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829.

### CASE NOTES

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance*

*Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987); *City of Fordyce v. Vaughn*, 300 Ark. 554, 781 S.W.2d 6 (1989).

#### **14-56-421. Enforcement of ordinances and regulations.**

(a)(1) Violations of any provision of ordinances and regulations adopted to carry out the intent of plans shall be considered a misdemeanor.

(2) Each day's violation shall be considered a separate offense.

(b)(1) The legislative body may enjoin any individual or property owner who is in violation of a planning ordinance to prevent or correct the violation.

(2) Any individual aggrieved by a violation of the ordinance may request an injunction against any individual or property owner in violation of the ordinance, or may mandamus any official to enforce the provisions of the ordinance.

**History.** Acts 1957, No. 186, § 5; 1965, No. 134, § 1; A.S.A. 1947, § 19-2829.

## CASE NOTES

### ANALYSIS

Sign ordinances.  
Enjoining of violations.

#### Sign Ordinances.

A municipal sign ordinance which provided for summary removal of signs upon determination by the city's building inspector that a particular sign was unlawfully maintained was not ultra vires, for the penalty provisions set out in this section are not exclusive. *Osage Oil & Transp., Inc. v. City of Fayetteville*, 260 Ark. 448, 541 S.W.2d 922 (1976).

#### Enjoining of Violations.

This section does not unconstitutionally enlarge jurisdiction of chancery courts by permitting the city to enjoin violations of zoning ordinances. *Basset v. City of Fayetteville*, 282 Ark. 395, 669 S.W.2d 1 (1984).

**Cited:** *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968); *Rickman v. Mobbs*, 253 Ark. 969, 490 S.W.2d 129 (1973); *National Lumber Co. v. Advance Dev. Corp.*, 293 Ark. 1, 732 S.W.2d 840 (1987).

### 14-56-422. Adoption of plans, ordinances, and regulations.

All plans, recommended ordinances, and regulations shall be adopted through the following procedure:

(1)(A) The planning commission shall hold a public hearing on the plans, ordinances, and regulations proposed under this subchapter.

(B) Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing.

(2) Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented, or in modified form, by a majority vote of the entire commission.

(3) Following its adoption of plans and recommendation of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the legislative body of the city for its adoption.

(4) The legislative body of the city may return the plans and recommended ordinances and regulations to the commission for further study or recertification or, by a majority vote of the entire membership, may, by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the commission. However, nothing in this subchapter shall be construed to limit the city council's authority to recall the ordinances and resolutions by a vote of a majority of the council.

(5) Following adoption by the legislative body, the adopted plans, ordinances, and regulations shall be filed in the office of the city clerk. The city clerk shall file, with the county recorder of the counties in which territorial jurisdiction is being exercised such plans, ordinances, and regulations as pertain to the territory beyond the corporate limits.

**History.** Acts 1957, No. 186, § 6; 1959, No. 128, § 1; A.S.A. 1947, § 19-2830.

## CASE NOTES

## ANALYSIS

Construction.

Compliance with ordinance.

Substantial compliance with section.

**Construction.**

Section 14-56-423 permits a change in the zoning plan, or rezoning, by a majority vote of the city council, without following the procedure requiring further planning by the commission as prescribed in this section. *City of Russellville v. Banner Real Estate*, 326 Ark. 673, 933 S.W.2d 803 (1996).

**Compliance with Ordinance.**

Nothing requires a city to create a planning commission or to delegate authority to it by ordinance; having chosen to do so, however, the city must abide by its own decisions until the ordinance is legally

altered or repealed in accordance with the law. *City of Fordyce v. Vaughn*, 300 Ark. 554, 781 S.W.2d 6 (1989).

**Substantial Compliance with Section.**

Where zoning ordinance map was filed in city's planning and code enforcement office, and not the city clerk's office, and citizens who went to the clerk's office and asked for a zoning map were referred to the planning office, such a filing did not render the ordinance invalid as there was substantial compliance with the statute. *Osborne v. City of Camden*, 301 Ark. 420, 784 S.W.2d 596 (1990).

**Cited:** *Corning v. Watson*, 252 Ark. 1277, 482 S.W.2d 797 (1972); *Tillery v. Meadows Constr. Co.*, 284 Ark. 241, 681 S.W.2d 330 (1984).

**14-56-423. Change in plans, etc.**

After adoption of plans, ordinances, and regulations and proper filing in the offices of city clerk and county recorder, no alteration, amendment, extension, abridgement, or discontinuance of the plans, ordinances, or regulations may be made except in conformance with the procedure prescribed in § 14-56-422, or by a majority vote of the city council.

**History.** Acts 1957, No. 186, § 6; 1959, No. 128, § 2; A.S.A. 1947, § 19-2830.

## CASE NOTES

## ANALYSIS

Construction.

Amendment procedures.

**Construction.**

This section permits a change in the zoning plan, or rezoning, by a majority vote of the city council, without following the procedure requiring further planning by the commission as prescribed in § 14-56-422. *City of Russellville v. Banner Real Estate*, 326 Ark. 673, 933 S.W.2d 803 (1996).

**Amendment Procedures.**

Where ordinance did not provide for the alternative method of amendment of boundaries by vote of city council, but, instead, provided for amendment only

through the complete planning procedure, such choice of procedures did not conflict with this section, for it simply continued to authorize the more extensive planning procedure. *Taggart & Taggart Seed Co. v. City of Augusta*, 278 Ark. 570, 647 S.W.2d 458 (1983).

Where comprehensive zoning ordinance provided for amendment of boundaries only through complete planning procedure, such provision was mandatory, and subsequent ordinance attempting to change boundary without complying with procedural requirements was invalid. *Taggart & Taggart Seed Co. v. City of Augusta*, 278 Ark. 570, 647 S.W.2d 458 (1983).

**Cited:** *Corning v. Watson*, 252 Ark.



1277, 482 S.W.2d 797 (1972); *Tillery v. Meadows Constr. Co.*, 284 Ark. 241, 681 S.W.2d 330 (1984).

### 14-56-424. Existing plans, etc.

(a) All plans, ordinances, regulations, or amendments thereto shall comply with the provisions of this subchapter.

(b) Nothing in this subchapter shall invalidate any plans, ordinances, or regulations duly adopted in accordance with the statutes in effect at the time of adoption.

(c) No alteration or amendments may be made to plans, ordinances, and regulations unless in conformity with the provisions of this subchapter.

**History.** Acts 1957, No. 186, § 6; A.S.A. 1947, § 19-2830.

### CASE NOTES

**Cited:** *Corning v. Watson*, 252 Ark. 1277, 482 S.W.2d 797 (1972); *Meadows Constr. Co.*, 284 Ark. 241, 681 S.W.2d 330 (1984).

### 14-56-425. Appeals to circuit court.

In addition to any remedy provided by law, appeals from final action taken by the administrative and quasi-judicial agencies concerned in the administration of this subchapter may be taken to the circuit court of the appropriate county where they shall be tried de novo according to the same procedure which applies to appeals in civil actions from decisions of inferior courts, including the right of trial by jury.

**History.** Acts 1957, No. 186, § 7; 1965, No. 134, § 2; A.S.A. 1947, § 19-2830.1.

**A.C.R.C. Notes.** In view of the decision in *Wenderoth v. City of Ft. Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971), the word “legislative” following “administrative and quasi-judicial” has been deleted preceding “agencies” as unconstitutional.

### RESEARCH REFERENCES

**Ark. L. Rev.** Antley, *Judicial Review of Non-Court Decisions: A Constitutionally Based Examination of Arkansas' Review System*, 49 Ark. L. Rev. 425.

### CASE NOTES

#### ANALYSIS

Administrative agencies.  
Collateral attacks.  
Compliance with court rules.  
Trial de novo.

#### Administrative Agencies.

In spite of the language of *Wenderoth v. City of Ft. Smith*, 251 Ark. 342, 472 S.W.2d 74 (1971), which held this section

unconstitutional when applied to allow de novo review of zoning or rezoning ordinances enacted by city legislative bodies, the provision of § 14-56-416 requiring appeals to a court of record from actions of a board of zoning adjustment is not subject to the constitutional limitations applicable to city council zoning actions because the board of adjustment acts administratively, not legislatively; appeals to the

circuit court from the board of adjustment are permitted. *City of Paragould v. Leath*, 266 Ark. 390, 583 S.W.2d 76 (1979).

#### **Collateral Attacks.**

A city cannot test the validity of a building permit issued by its own agency by collaterally attacking its correctness in an original injunctive proceeding in chancery court. *City of Paragould v. Leath*, 266 Ark. 390, 583 S.W.2d 76 (1979).

#### **Compliance with Court Rules.**

In landowner's challenge to a decision by the board of zoning adjustment that he had abandoned a nonconforming use of the property, the circuit court never had jurisdiction where the landowner failed to perfect his appeal in the time and manner provided by AICR 9. *Board of Zoning Adjustment v. Cheek*, 328 Ark. 18, 942 S.W.2d 821 (1997).

#### **Trial De Novo.**

This section requires that appeals from the board of adjustment to the circuit court be tried de novo on the same issue that was pending before the board. *Arkansas Power & Light Co. v. City of Little Rock*, 243 Ark. 290, 420 S.W.2d 85 (1967).

In an appeal from action of a board of zoning adjustment denying a variance, the petitioners were entitled to present their petition for a variance anew and have it tried de novo. *City of Little Rock v. Leawood Property Owners' Ass'n*, 242 Ark. 451, 413 S.W.2d 877 (1967).

In an appeal to the circuit court from a board of zoning adjustment, it was error for the circuit court to review the decision of the board only as to whether or not there was substantial evidence in the record of the hearing before the board to support the ruling of the board instead of trying the petition for a variance de novo. *Arkansas Power & Light Co. v. City of Little Rock*, 243 Ark. 290, 420 S.W.2d 85 (1967).

A de novo hearing on appeal is proper when the appeal is from actions taken by administrative boards, commissions, and agencies exercising adjudicatory or quasi-judicial functions. *McCammon v. Boyer*, 285 Ark. 288, 686 S.W.2d 421 (1985); *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

Review de novo of a legislative act is unconstitutional. *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

Where appeal to the circuit court was from action of the City Council on application of its zoning regulations rather than from the enactment of them, de novo review was proper. *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 837 S.W.2d 286 (1992).

**Cited:** *Osage Oil & Transp., Inc. v. City of Fayetteville*, 260 Ark. 448, 541 S.W.2d 922 (1976); *Corder v. City of Sherwood*, 579 F. Supp. 1042 (E.D. Ark. 1984).

### **14-56-426. Control of property use — Proximity to military installation.**

(a) Any city of the first class in this state within which there lies in whole or in part an active-duty United States Air Force military installation shall enact a city ordinance specifying that within five (5) miles of the corporate limits future uses on property which might be hazardous to aircraft operation shall be restricted or prohibited.

(b) The ordinance shall restrict or prohibit future uses within the five-mile area:

(1) Which release into the air any substance which would impair visibility or otherwise interfere with the operation of aircraft, i.e. steam, dust, or smoke;

(2) Which produce light emissions, either direct or indirect, reflective, which would interfere with pilot vision;

(3) Which produce electrical emissions which would interfere with aircraft communications systems or navigational equipment;

(4) Which would attract birds or waterfowl, including, but not limited to, operation of sanitary landfills, maintenance of feeding stations, or the growing of certain vegetation;

(5) Which provide for structures within ten feet (10') of aircraft approach, departure, or transitional surfaces; or

(6) Which expose persons to noise greater than seventy-five (75) decibels.

(c) The ordinance shall restrict or prohibit future uses within the five-mile area which violate the height restriction criteria of Federal Aviation Regulation, part 77, subpart C.

(d)(1) The ordinance shall be consistent with recommendations or studies made by the United States Air Force entitled *Air Installation Compatible Use Zone Study*, Volumes I, II, and III, dated October 1992.

(2) Interpretations of such ordinance shall take into account such recommendations or studies with a view to protection of the public and maintenance of safe aircraft operations.

(e) The ordinance shall not prohibit single-family residential use on tracts an acre or more in area, provided that future construction shall comply with *Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations*, Wyle Research Report WR 89-7, which construction shall be regulated and inspected by the city's existing building permit and inspection ordinances and procedures.

**History.** Acts 1995, No. 530, §§ 1-5.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 14-56-401 — 14-56-425

may not apply to this section which was enacted subsequently.

## SUBCHAPTER 5 — METROPOLITAN OR REGIONAL PLANNING COMMISSIONS

### SECTION.

- 14-56-501. Provisions supplemental.
- 14-56-502. Authority generally.
- 14-56-503. Contents of joint agreement.
- 14-56-504. Establishment of commission.
- 14-56-505. Purpose of commission.

### SECTION.

- 14-56-506. Duty of commission.
- 14-56-507. Plans and recommendations.
- 14-56-508. Receipt of funds.
- 14-56-509. Appropriations.

**Publisher's Notes.** Acts 1955, No. 26, is also codified as § 14-17-301 et seq.

**Effective Dates.** Acts 1955, No. 26, § 8: Feb. 1, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that many cities and counties are faced with many problems which have arisen due to increased population, expansion of urban areas, and many other problems which have resulted from improper planning and which have

resulted in the endangering of the health, safety and welfare of the people of such areas and that the immediate passage of this Act is necessary to alleviate such conditions. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."



**RESEARCH REFERENCES**

**UALR L.J.** Note, Property — Zoning — The Courts Further Define Their Limited Role. *City of Little Rock v. Breeding*, 273 Ark. 437, 619 S.W.2d 664 (1981). 5 UALR L.J. 279.

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**14-56-501. Provisions supplemental.**

(a) Nothing in this subchapter shall be construed to remove or limit the powers of the cooperating cities and counties as provided by state law.

(b) All legislative power with respect to zoning and other planning legislation shall remain with the governing body of the cooperating cities and counties.

(c) Each participating city or county may continue to have its own planning commission or board but may, under the joint agreement and in the interest of economy and efficiency and in the interest of uniform standards and procedures, request the metropolitan or regional planning commission to assume duties and functions of local planning agencies, in whole or in part.

**History.** Acts 1955, No. 26, § 5; A.S.A. 1947, § 19-2824.

**14-56-502. Authority generally.**

Any two (2) or more cities of the first class, cities of the second class, incorporated towns, or counties, or other civil subdivisions having adjoining planning jurisdictions, or any counties, and cities within or adjacent to the county, may jointly cooperate in the exercise and performance of planning powers, duties, and functions as provided by state law for cities and counties.

**History.** Acts 1955, No. 26, § 1; A.S.A. 1947, § 19-2820.

**CASE NOTES****Annexation.**

Since this subchapter concerning the establishment, powers, and duties of a joint planning commission in no way deals with annexation, the annexation of an

area to a city will not be denied because the annexation has not been approved by a planning commission. *City of Sherwood v. Hardin*, 230 Ark. 762, 325 S.W.2d 75 (1959).

**14-56-503. Contents of joint agreement.**

(a) The cooperating cities and counties which join to create a metropolitan or regional planning commission, through joint agreement, shall determine the number and qualifications of the members of the commission.

(b) The joint agreement shall also provide for the manner of cooperation and the means and methods of the operation and functioning of the commission, including the employment of a director of planning and such staff and consultants as it may require, the proportionate share of costs and expenses, and the purchase of property and materials for the use of the commission.

(c) The joint agreement may also allow for the addition of other public bodies to the cooperative arrangement.

**History.** Acts 1955, No. 26, § 3; 1967, No. 29, § 1; A.S.A. 1947, § 19-2822.

#### **14-56-504. Establishment of commission.**

(a) When two (2) or more cities and counties shall adopt joint planning cooperation by ordinance, resolution, rule, or order, there shall be established a joint planning commission for the metropolitan area or region comprising the area coterminous with the areas of planning jurisdiction of the cities or counties cooperating jointly.

(b) A joint planning agency for the metropolitan area or region may be empowered to carry into effect such provisions of state law relating to planning which are authorized for the joining cities or counties and which each may, under existing laws, separately exercise and perform.

(c) Any other public authority or agency which operates within, wholly or in part, the area covered by this joint planning cooperation may likewise join with the cooperating cities or counties in cooperative planning through resolution of its governing board or commission.

**History.** Acts 1955, No. 26, § 1; A.S.A. 1947, § 19-2820.

#### **14-56-505. Purpose of commission.**

The general purpose of a metropolitan or regional planning commission shall be to make those studies and plans for the development of the metropolitan area or region that will:

- (1) Guide the unified development of the area;
- (2) Eliminate planning duplication;
- (3) Promote economy and efficiency in the coordinated development of the area; and
- (4) Promote the general welfare and prosperity of its people.

**History.** Acts 1955, No. 26, § 2; A.S.A. 1947, § 19-2821.

**14-56-506. Duty of commission.**

The metropolitan or regional planning commission shall have the duty and function of promoting public interest and understanding of the economic and social necessity for long-term coordinated planning for the metropolitan or regional area, but its official recommendations shall be made to the governing bodies or the county judges of the cooperating cities or counties.

**History.** Acts 1955, No. 26, § 5; A.S.A. 1947, § 19-2824.

**14-56-507. Plans and recommendations.**

(a)(1) The metropolitan or regional commission shall make plans for development for the area. These plans may include, but shall not be limited to, recommendations for principal highways, bridges, airports, parks and recreational areas, schools and public institutions, and public utilities.

(2) Any metropolitan or regional plan so developed shall be based on studies of physical, social, economic, and governmental conditions and trends.

(b) The plans and its recommendations may, in whole or in part, be adopted by the governing bodies of the cooperating cities and counties as the general plans of such cities and counties.

(c)(1) The commission may also assist the cities and counties within its area of jurisdiction in carrying out any regional plans developed by the commission; and

(2) The commission may also assist any planning commission, board, or agency of the cooperating cities or counties in the preparation or effectuation of local plans and planning consistent with the program of the commission.

**History.** Acts 1955, No. 26, § 2; A.S.A. 1947, § 19-2821.

**14-56-508. Receipt of funds.**

A metropolitan or regional planning commission established under the provisions of this subchapter is authorized to receive, for its own uses and purposes, any funds or moneys from any participating city or county, from the state or federal government, and to receive from any other source any other funds including bequests, gifts, donations, or contributions.

**History.** Acts 1955, No. 26, § 4; A.S.A. 1947, § 19-2823.



### 14-56-509. Appropriations.

The participating cities and counties, or other public bodies, are authorized to appropriate funds for the expenses and costs required by the metropolitan or regional planning commission in the performance of its purposes and functions.

**History.** Acts 1955, No. 26, § 4; A.S.A. 1947, § 19-2823.

## SUBCHAPTER 6 — COMMERCIAL MEDICAL WASTE INCINERATORS

### SECTION.

14-56-601. Definition.

14-56-602. Authorization to establish zones.

14-56-603. Enforcement.

### SECTION.

14-56-604. Unlawful construction or operation.

14-56-605. Violation — Penalty — Injunction.

**Cross References.** County planning, commercial medical waste incinerators, § 14-17-401 et seq.

**Effective Dates.** Acts 1993, No. 199, § 7: Feb. 24, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the powers of local governments in Arkansas to regulate the construction or operation of commercial medical waste incinerators are vague or incomplete; that the unregulated incineration of commercial medical waste poses a threat to the health and safety of the

citizens of Arkansas cities and counties; and therefore commercial medical waste incinerators should be made subject to the regulation by and control of local governments in Arkansas. Therefore, in order to clearly establish the authority of local governments to limit and regulate commercial medical waste incinerators, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

### 14-56-601. Definition.

"Commercial medical waste" means any medical waste transported from a generator to an off-site facility for disposal where such off-site disposal facility is engaged in medical waste disposal for profit.

**History.** Acts 1993, No. 199, § 3.

**Publisher's Notes.** Acts 1993, No. 199, § 3 is also codified as § 14-17-401.

### 14-56-602. Authorization to establish zones.

Notwithstanding any and all laws regarding municipal planning and zoning, all cities of the first and second class and all incorporated towns in Arkansas are authorized to establish, by ordinance, zones to limit or to regulate the construction or operation, or both, of commercial medical waste incinerators within the corporate limits of the city or town.

**History.** Acts 1993, No. 199, § 1.

#### **14-56-603. Enforcement.**

The commercial medical waste incinerator zoning ordinance shall be enforced through the issuance or denial of building and use permits in accordance with the conditions and terms of the limitations and regulations established by the ordinance.

**History.** Acts 1993, No. 199, § 1.

#### **14-56-604. Unlawful construction or operation.**

When the city or town council shall have laid off zones, by ordinance, to limit or to regulate the construction or operation, or both, of commercial medical waste incinerators, it shall be unlawful for anyone to construct or to operate a commercial medical waste incinerator within a given zone except in accordance with any building and use permits issued for the incinerator.

**History.** Acts 1993, No. 199, § 1.

#### **14-56-605. Violation — Penalty — Injunction.**

(a)(1) Violation of any provision of an ordinance adopted as authorized by this subchapter shall be considered a misdemeanor.

(2) Each day's violation shall be considered a separate offense.

(b) The city or town adopting the ordinance or any individual aggrieved by a violation of the ordinance may request an injunction against any commercial medical waste incinerator or property owner who is in violation of the ordinance.

**History.** Acts 1993, No. 199, § 1.

## **CHAPTER 57**

### **REGULATION AND TAXATION OF VEHICLES BY MUNICIPALITIES**

#### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. MOTOR CARRIERS GENERALLY.
3. REGULATION OF TAXICAB OPERATORS.
4. TAXICAB AND BUS DRIVERS.
5. PARKING METERS GENERALLY.
6. PARKING METER REVENUES.
7. CITY OR TOWN VEHICLE TAX.

RESEARCH REFERENCES

Am. Jur. 56 Am. Jur. 2d, Mun. Corp.,  
§ 481.

C.J.S. 62 C.J.S., Mun. Corp., §§ 307,  
308.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.	SECTION.
14-57-101. Regulation of cabs and buses.	14-57-104. Tax on certain wheeled vehi- cles.
14-57-102. Unlawful riding on cars.	
14-57-103. Regulation of tire width.	

**Cross References.** General authority to license carriages etc., kept for hire, § 14-54-1403.

Motor vehicular traffic powers of local authorities, § 27-49-106.

Regulation of the transportation of arti-

cles generally, § 14-54-103.

**Effective Dates.** Acts 1875, No. 1, § 95: effective on passage.

Acts 1901, No. 89, § 2: effective on pas-  
sage.

14-57-101. Regulation of cabs and buses.

The city council shall have the power in cities of the first class to establish, by ordinance, stands for taxicabs and buses and enforce the observance and use thereof, and to fix the rates and prices for the transportation of persons and property in cabs and buses from one (1) part of the city to another.

**History.** Acts 1875, No. 1, § 7, p. 1; C. & M. Dig., § 7597; Pope's Dig., § 9683; A.S.A. 1947, § 19-3501.

14-57-102. Unlawful riding on cars.

All cities and incorporated towns shall have the power to pass ordinances prohibiting persons from unlawful riding on cars within the limits of the city or incorporated town.

**History.** Acts 1901, No. 89, § 1, p. 154; C. & M. Dig., § 7531; Pope's Dig., § 9600; A.S.A. 1947, § 19-3502.

14-57-103. Regulation of tire width.

The city council shall have the power, in cities of the first class, to prescribe, by ordinance, the width of the tire of all wagons, carts, drays, and other vehicles used in transportation of persons or articles from one (1) part of the city to another, or in the transportation of coal, wood, stone, lumber, or iron into the city.



**History.** Acts 1875, No. 1, § 7, p. 1; C. & M. Dig., § 7597; Pope's Dig., § 9683; A.S.A. 1947, § 19-3501.

### 14-57-104. Tax on certain wheeled vehicles.

(a) Cities of the first class are authorized to require residents of the city to pay a tax for the privilege of keeping and using wheeled vehicles, except motor vehicles and bicycles.

(b) The tax shall be appropriated and used exclusively for repairing and improving streets of the city.

**History.** Acts 1901, No. 66, § 1, p. 113; C. & M. Dig., § 7749; Pope's Dig., § 10047; A.S.A. 1947, § 19-3505.

### CASE NOTES

#### Motor Vehicles.

This section, as applied to automobiles was held repealed by § 27-14-702, which provides that the owner of a motor vehicle who shall have obtained a certificate as provided shall not be required to obtain any other license or permits to use and

operate the vehicle. *City of Helena v. Dunlap*, 102 Ark. 131, 143 S.W. 138 (1912).

This section was not repealed but was modified as to motor vehicles only. *Van Buren v. Lawson*, 160 Ark. 631, 255 S.W. 295 (1923).

## SUBCHAPTER 2 — MOTOR CARRIERS GENERALLY

#### SECTION.

14-57-201. Right to regulate and tax.

14-57-202. Cash indemnity bonds of passenger carriers.

**Effective Dates.** Acts 1931, No. 239, § 3: approved Mar. 24, 1931. Emergency clause provided: "The licensing and regulation of taxicabs and other carriers within the cities of Arkansas being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after passage."

Acts 1937, No. 126, § 3: approved Feb. 24, 1937. Emergency clause provided: "Due to requirements made by certain municipal Governments in this State that operators of motor propelled vehicles for transportation of persons for compensation, carry a large amount of liability

insurance which cannot be written in this State, many persons, firms, corporations, and associations of persons are prohibited from operating motor propelled vehicles for the transportation of persons for compensation and therefore, are losing large sums of money invested in such enterprise and will thereby suffer irreparable injury if they cannot secure immediate relief, and will thereby be deprived of their property and the use thereof; an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, this act shall take effect and be in full force from and after the day of its passage."

**14-57-201. Right to regulate and tax.**

Municipalities within the state shall have the right to regulate and tax all motor carriers operating within their corporate limits transporting persons or freight both originating at and destined to points within the corporate limits of the same city or town, or transporting from one (1) city or town to another city or town whose corporate limits join each other, or within a radius of five (5) miles beyond any such corporate limits of cities or towns, or for occasional trips of ten (10) miles beyond any such corporate limits, and shall not be governed by, or amenable to, the provisions of § 23-13-103 in regulating or taxing vehicles used for these purposes.

**History.** Acts 1931, No. 239, § 1; Pope's Dig., § 9734; A.S.A. 1947, § 19-3510.

CASE NOTES

**Wreckers.**

This section was held not to exempt automobile wreckers. *Gates v. Reese*, 185 Ark. 883, 50 S.W.2d 236 (1932).

**14-57-202. Cash indemnity bonds of passenger carriers.**

In any case where ordinances of any municipality require persons, firms, corporations, or associations operating motor-propelled vehicles for transportation of persons for compensation to procure liability insurance or indemnity bonds, it shall be a substantial compliance with the ordinances if the persons, firms, corporations, or associations furnish a cash indemnity bond conditioned on the same conditions as required on liability insurance policies and in such amount as required for liability insurance policies.

**History.** Acts 1937, No. 126, § 1; Pope's Dig., § 10048; A.S.A. 1947, § 19-3511.

SUBCHAPTER 3 — REGULATION OF TAXICAB OPERATORS

SECTION.

- 14-57-301. Definitions.
- 14-57-302. Exclusive power to regulate.
- 14-57-303. Approval and review of rates, etc.
- 14-57-304. Permit required.

SECTION.

- 14-57-305. Application for permit.
- 14-57-306. Surety bond requirement.
- 14-57-307. Hearing on application.
- 14-57-308. Judicial review.

**Cross References.** Liability insurance prerequisite to licensing, § 27-14-1501.  
**Effective Dates.** Acts 1939, No. 213, § 10; Mar. 9, 1939. Emergency clause pro-

vided: "By reason of the fact that confusion and uncertainty now exist as to where the power to license and regulate the business herein referred to is vested,

which confusion and uncertainty should be eliminated, and by reason of the further fact that the control and regulation of such business in cities of the first class ought immediately to be clearly vested in the municipalities in which such businesses and activities are respectively carried on, an emergency is hereby declared to exist; and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force immediately after its passage and approval."

Acts 1947, No. 392, § 4: Mar. 28, 1947. Emergency clause provided: "By reason of the fact that confusion and uncertainty exists in some cities of the second class by reason of the unrestricted, uncontrolled and unregulated operation of taxicabs is carried on and by the reason of the fact that the control and regulation in such business in cities of the second class ought immediately to be vested in the municipalities in which businesses are respectively carried on an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health, and safety and welfare, shall take effect and be in force immediately after its passage and approval."

Acts 1967, No. 238, § 4: Mar. 8, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirement of Five Thousand Dollars (\$5,000.00) in a bank as a prerequisite to the issuance of a permit to operate a taxi service is unduly restrictive, harsh, unjustified, and obsolete; that the reason for this requirement originally was to insure a solvent and responsible operator; that since the passage of the original Act, each taxi must have liability coverage under Section 1 of Act 485 of 1949, as amended, as a prerequisite to the issuance of a motor vehicle license; and that, in order to remove this obsolete provision, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### CASE NOTES

#### **Constitutionality.**

The unconstitutionality of Acts 1939, No. 213, § 7, does not affect the validity of the remaining sections of the act which are separable from § 7 and are sufficient

alone to constitute a workable act. *North Little Rock Transp. Co. v. City of North Little Rock*, 207 Ark. 976, 184 S.W.2d 52, 159 A.L.R. 813 (1944).

### **14-57-301. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Taxicab" means motor-driven vehicles having a seating capacity not in excess of seven (7) passengers and used for the transportation of persons for hire. Included within the meaning of the term shall not be any vehicle have a seating capacity in excess of seven (7) passengers and employed in transporting persons over regular routes having fixed termini or upon regular schedules of operation;

(2) "Taxicab operator" means any person, firm, association, or corporation owning and operating taxicabs.

**History.** Acts 1939, No. 213, § 1; A.S.A. 1947, § 19-3512.



## CASE NOTES

**Taxicab.**

Section 14-57-307 did not apply to mini buses operated by a mass transportation service where the mini buses did not fit within the definition of a "taxicab."

*Razorback Cab of Ft. Smith, Inc. v. Flowers*, 122 F.3d 657 (1997).

**Cited:** *Carr v. City of El Dorado*, 217 Ark. 423, 230 S.W.2d 485 (1950).

**14-57-302. Exclusive power to regulate.**

Cities of the first and second class are vested, within their respective corporate limits, with the exclusive power and authority to permit, regulate, and control, by ordinance, the business and operation of motor-driven taxicabs over or upon the streets and public ways of their respective municipalities. This power and authority shall include the right to approve or disapprove, to prescribe or reject, and to enforce maximum rates and tariffs to be charged for services rendered by any taxicab operator in these cities and to enforce, by such suitable penalties and forfeitures as may be fixed by ordinance, all regulations, rates, and tariffs that may be approved or prescribed.

**History.** Acts 1939, No. 213, § 2; 1947, No. 392, § 1; A.S.A. 1947, § 19-3513.

## CASE NOTES

## ANALYSIS

Criminal offenders.  
Revocation of permits.

**Criminal Offenders.**

Section 17-1-103, which states a broad policy of rehabilitating those who have been convicted of a crime, does not conflict with this section, which allows cities to regulate the operation of taxicabs, because § 17-1-103 does not attempt to give a person a right to a particular job; therefore, the city ordinance which prohibited the issuance of a taxicab driver's permit to any person convicted of driving while un-

der the influence of intoxicating liquors within the past three years did not violate Ark. Const., Art. 12, § 4, which prohibits cities from enacting local laws contrary to state statute. *Bolden v. Watt*, 290 Ark. 343, 719 S.W.2d 428 (1986).

**Revocation of Permits.**

Where the city issued a permit to operate a taxicab and the permittee failed to operate a cab for approximately a year, the city was justified in revoking the permit for noncompliance. *Veteran's Taxicab Co. v. City of Ft. Smith*, 213 Ark. 687, 212 S.W.2d 341 (1948).

**14-57-303. Approval and review of rates, etc.**

(a) No rate, tariff, or regulation shall be approved or prescribed by any first or second class city, except after due and reasonable notice to each and every taxicab operator affected shall have been given and after adequate opportunity to be heard with respect thereto shall have been afforded to each and every taxicab operator.

(b)(1) Any rate, tariff, or regulation approved, disapproved, prescribed, or rejected shall be subject to judicial review.

(2)(A) On review, they shall be sustained if reasonable and adequate to permit a fair, just, and reasonable return to the operator.

(B) If unreasonable, confiscatory, or inadequate to permit a fair and reasonable return to the operator, they shall be annulled.

(3) No court shall, in any event, however, have any power or jurisdiction to make or fix rates, tariffs, or regulations.

(c) All rates, tariffs, and regulations initiated, prescribed, approved, or enforced by any municipality shall apply equally and uniformly to all taxicab operators in the municipality.

**History.** Acts 1939, No. 213, § 3; A.S.A. 1947, § 19-3514.

#### CASE NOTES

##### **Graduated Rates.**

This subchapter conferring power to municipalities in their exercise of police power to pass ordinances imposing an occupational tax on taxis does not autho-

rize the imposition of a graduated tax, and such an ordinance is void. *Baldwin v. City of Blytheville*, 212 Ark. 975, 208 S.W.2d 458 (1948).

#### **14-57-304. Permit required.**

(a) No person, firm, corporation, or association shall engage in or carry on the business referred to in § 14-57-302 in cities of the first or second class without first procuring from the governing body of the municipality in which it is proposed to operate a permit so to do.

(b) Governing bodies of these cities are authorized to grant or to refuse these permits.

**History.** Acts 1939, No. 213, § 4; 1947, No. 392, § 2; A.S.A. 1947, § 19-3515.

#### CASE NOTES

##### **Issuance and Revocation.**

The city commissioner has authority to issue or revoke a permit to operate a

taxicab. *Veteran's Taxicab Co. v. City of Ft. Smith*, 213 Ark. 687, 212 S.W.2d 341 (1948).

#### **14-57-305. Application for permit.**

Before granting any permit under § 14-57-304, the governing body shall require the seeker of the permit to file with it an application, verified by oath and setting forth the facts showing his qualification to render the service for which he seeks the permit, together with the facts which he considers justified, and require the rendering to the public of the service.

**History.** Acts 1939, No. 213, § 5; 1947, No. 392, § 3; 1967, No. 238, § 1; A.S.A. 1947, § 19-3516.

**14-57-306. Surety bond requirement.**

(a) No permit shall be granted under § 14-57-304 until and unless the applicant shall file with the governing body of the city or town a surety bond of a corporate surety authorized to do business in this state, in such amount as the city or town shall determine, conditioned upon the applicant establishing, maintaining, and continuing the proposed service until such time as the permit issued to applicant is cancelled, withdrawn, or has expired.

(b) If the applicant fails to comply with the provisions of the bond, the city or town shall forfeit such amount of the bond as it shall deem necessary to adequately compensate the city or town for loss of the applicant's service.

**History.** Acts 1939, No. 213, § 5; 1947, No. 392, § 3; 1967, No. 238, § 1; A.S.A. 1947, § 19-3516.

**14-57-307. Hearing on application.**

(a) Upon the filing of an application, the city shall cause to be given to each and every taxicab operator in the city a due and reasonable notice, in writing. Notice of the hearing shall set forth the time and place of the hearing. The hearing shall be conducted by the governing body of the city for all persons interested in, or affected by, the application.

(b) All persons interested in, or affected by, the application, including all carriers at the time rendering any type of for-hire service in the city, shall have the right either in person or by representatives of their own choosing, to be present at all such hearings and to introduce evidence and to be heard either in support of, or in opposition to, the application.

**History.** Acts 1939, No. 213, § 6; A.S.A. 1947, § 19-3517.

**CASE NOTES****Applicability.**

This section did not apply to mini buses operated by a mass transportation service where the mini buses did not fit within the definition of a "taxicab." Razorback Cab of

Ft. Smith, Inc. v. Flowers, 122 F.3d 657 (1997).

**Cited:** Carr v. City of El Dorado, 217 Ark. 423, 230 S.W.2d 485 (1950).

**14-57-308. Judicial review.**

Any final action of the governing body of the municipality in respect to any application shall be subject to judicial review.

**History.** Acts 1939, No. 213, § 8; A.S.A. 1947, § 19-3518.



**SUBCHAPTER 4 — TAXICAB AND BUS DRIVERS**

## SECTION.

14-57-401. Penalty.

14-57-402. Unlawful for minors to operate.

## SECTION.

14-57-403. Persons not licensed.

14-57-404. Proof of age required.

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**Effective Dates.** Acts 1919, No. 557, § 5; approved Mar. 28, 1919. Emergency declared.

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**14-57-401. Penalty.**

It shall be unlawful for any person, firm, or corporation to employ another, who is under the age of twenty-one (21) years, to operate or drive a taxicab or bus for hire, or otherwise, in cities of the first class in this state. Any person found guilty of a violation of this subchapter shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense.

**History.** Acts 1919, No. 557, § 4; C. & M. Dig., § 7443; Pope's Dig., § 6655; Acts 1941, No. 346, § 1; A.S.A. 1947, § 19-3522.

**14-57-402. Unlawful for minors to operate.**

It shall be unlawful for any person under the age of twenty-one (21) years to operate any taxicab or bus service for hire, or otherwise, in a city of the first class in the State of Arkansas or to drive a bus or taxicab, as employee, partner, or otherwise, for another.

**History.** Acts 1919, No. 557, § 1; C. & M. Dig., § 7440; Pope's Dig., § 6652; A.S.A. 1947, § 19-3519.

**14-57-403. Persons not licensed.**

No person who is under the age of twenty-one (21) years shall be licensed to drive a bus or taxicab for hire, or otherwise, in any city of the first class in the State of Arkansas.

**History.** Acts 1919, No. 557, § 2; C. & M. Dig., § 7441; Pope's Dig., § 6653; A.S.A. 1947, § 19-3520.

**14-57-404. Proof of age required.**

Before anyone shall be licensed to drive a bus or taxicab in this state, satisfactory proof must be made that the applicant is twenty-one (21) years of age or over and of good moral character.

**History.** Acts 1919, No. 557, § 3; C. & M. Dig., § 7442; Pope's Dig., § 6654; A.S.A. 1947, § 19-3521.

**SUBCHAPTER 5 — PARKING METERS GENERALLY**

SECTION.

- 14-57-501. Authority to install.
- 14-57-502. Ordinances subject to initiative and referendum.

**14-57-501. Authority to install.**

Cities of the first and second class are authorized, upon the passage of a municipal ordinance, to install parking meters on the streets and other municipally owned property of the city.

**History.** Acts 1953, No. 89, § 1; A.S.A. 1947, § 19-3533.

**CASE NOTES**

**Initiative and Referendum.**

A city has no power to enter into any contract or to enact any ordinance which would limit the rights of the citizens under the initiative and referendum amend-

ment of the Arkansas constitution. *Duncan Parking Meter Corp. v. City of Gurdon*, 146 F. Supp. 280 (W.D. Ark. 1956).

**14-57-502. Ordinances subject to initiative and referendum.**

Any municipal ordinance authorizing the installation of parking meters shall not be subject to an emergency clause. Nothing in this subchapter shall limit the rights of the people under the Initiated and Referendum Amendment to the Constitution of the State of Arkansas.

**History.** Acts 1953, No. 89, § 2; A.S.A. 1947, § 19-3534.

**Cross References.** Initiative and Referendum, Ark. Const. Amend. 7.

**SUBCHAPTER 6 — PARKING METER REVENUES**

SECTION.

- 14-57-601. Definitions.
- 14-57-602. Construction.
- 14-57-603. Provisions exclusive.
- 14-57-604. Use of revenues.
- 14-57-605. Election for issuance of revenue bonds.
- 14-57-606. Form and sale of bonds.

SECTION.

- 14-57-607. Bonds payable from meter revenues.
- 14-57-608. Pledge not to discontinue operation of meters.
- 14-57-609. Default in payment of bonds.
- 14-57-610. Acceleration of maturities — Priorities.

**Effective Dates.** Acts 1951, No. 269, § 12: Mar. 19, 1951. Emergency clause provided: "Because there are many municipalities that have immediate need for funds in order to provide rights-of-way or to improve streets and thoroughfares

within their corporate limits, it is hereby ascertained and declared that an emergency exists; and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force upon its passage and approval."

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### **14-57-601. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Municipality" means an incorporated town or a city of the first or second class;

(2) "Net revenues" means that part of the revenue derived by a municipality from the operation of parking meters which remains each year after paying all costs of operation and maintenance for that year, making adequate provisions for depreciation and obsolescence, and providing for the payments due that year on any indebtedness of the municipality arising from the purchase or installation, or both, of the parking meters and payable out of the revenues from the meters; and

(3) "Legislative body" means the council of any municipality, or the city commission if the municipality has a commission form of government.

**History.** Acts 1951, No. 269, § 1;  
A.S.A. 1947, § 19-3523.

### **14-57-602. Construction.**

This subchapter, being necessary for the public health, safety, and welfare, shall be liberally construed to effectuate the purposes thereof.

**History.** Acts 1951, No. 269, § 10;  
A.S.A. 1947, § 19-3532.

### **14-57-603. Provisions exclusive.**

Without reference to any other statute, this subchapter shall be deemed full authority for the issuance and sale of the bonds authorized by this subchapter. No petition or election or other or further proceedings in respect to the issuance or sale of bonds under this subchapter, and no publication of any resolution, ordinance, notice, or proceeding relating to such issuance or sale of such bonds shall be required except such as are prescribed by this subchapter, any provisions of other statutes of the state to the contrary notwithstanding.

**History.** Acts 1951, No. 269, § 9;  
A.S.A. 1947, § 19-3531.



**14-57-604. Use of revenues.**

(a) Any municipality in the State of Arkansas owning and operating parking meters may use the net revenues derived from this ownership and operation for:

- (1) The purchase of real estate to be used for parking lots;
- (2) The purchase of rights-of-way for the construction of public streets, alleys, and boulevards or for the construction of, widening, straightening, paving, resurfacing, lighting, or otherwise improving streets, alleys, and boulevards;
- (3) The purchase, development, and improvement of public parks located within or without the corporate limits of the municipality;
- (4) The purchase of fire fighting apparatus and fire alarm systems;
- (5) The purchase of sites for, construction of, and equipment of city halls and prisons;
- (6) Buildings for housing of fire fighting apparatus;
- (7) Buildings for the police department; and
- (8) The construction and equipment of any municipal complex.

(b) Nothing in this section shall be construed to authorize any municipality to use these revenues, to issue or sell revenue bonds, or to use the proceeds thereof to purchase, condemn, or otherwise acquire any utility, plant, property, or facilities owned or operated by any regulated utility.

**History.** Acts 1951, No. 269, § 2; 1965, No. 156, § 1; A.S.A. 1947, § 19-3524.

**14-57-605. Election for issuance of revenue bonds.**

(a)(1) Whenever the legislative body of any municipality shall determine to exercise the power granted by this subchapter, it shall state the purpose and cause an estimate to be made of cost of such purpose.

(2)(A) If the cost is greater than the legislative body deems should be paid in a single year, it shall, by ordinance, provide for an election to be called for the issuance of revenue bonds under the provisions of this subchapter.

(B) The ordinance shall set forth:

- (i) A brief description of the purpose of the bond issue. If for more than one (1) purpose, provision shall be made in the ordinance for balloting on each separate purpose;
- (ii) The estimated cost thereof;
- (iii) The amount of the bond issue;
- (iv) The rate of interest;
- (v) The time of payment; and
- (vi) Other details in connection with the issuance of bonds.

(b)(1) The election shall be held and conducted and the vote thereof canvassed and the result declared under the law and in the manner provided for municipal elections, so far as it may be applicable, except as otherwise provided in this section.

(2)(A) Notice of the election shall be given by the presiding officer of the legislative body of the issuing municipality by advertisement once a week for four (4) consecutive weeks in some newspaper published in the municipality or, if no newspaper is published therein, in a newspaper having a bona fide and general circulation therein.

(B)(i) The first publication shall be not less than thirty (30) days prior to the date of the election.

(ii) This shall be the sole notice required for the election.

(3) Only qualified voters of the municipality shall have the right to vote at the election.

(4)(A) The result of the election, after the vote has been canvassed by the county board of election commissioners, shall be proclaimed by the presiding officer of the legislative body. His proclamation shall be published one (1) time in some newspaper published in the municipality or, if none is published therein, in a newspaper having a bona fide circulation therein.

(B) The result as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of the publication of the proclamation.

(5) The expenses of the election shall be paid in the manner prescribed by law.

(6) In the event a majority of electors voting in the election approve the issuance of the bonds, the legislative body shall then have power to issue bonds, which shall bear interest at not more than five percent (5%) per annum, payable semiannually. The bonds shall be payable at such times, not exceeding thirty (30) years from their date, as shall be prescribed by the ordinance authorizing their issuance.

**History.** Acts 1951, No. 269, § 3;  
A.S.A. 1947, § 19-3525.

## RESEARCH REFERENCES

**Ark. L. Rev.** Municipal Improvement  
Bonds in Arkansas, 8 Ark. L. Rev. 146.

### 14-57-606. Form and sale of bonds.

(a)(1) Bonds issued under the provisions of this subchapter shall be negotiable instruments and shall be executed by the presiding officer and clerk or recorder of the legislative body of the issuing municipality, and shall be sealed with the corporate seal of the municipality.

(2) In the case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until the delivery.

(b) The bonds may be sold at not less than ninety cents (90¢) on the dollar, and they may be sold with the privilege of converting to a lower interest rate if, by such conversion, the municipality shall receive no

less and pay no more than it would receive or pay if the bonds were not converted.

(c)(1) The bonds shall be sold at a public sale after advertisement once a week for three (3) weeks in some newspaper published in the county in which the municipality lies.

(2) The first publication shall be not less than twenty (20) days before the date fixed for the sale.

(d) The bonds shall be sold for cash, and the proceeds derived therefrom shall be used exclusively for the purpose for which the bonds are issued.

(e) The bonds may be sold and issued all at one (1) time or they may be sold and issued in parcels as funds are needed.

**History.** Acts 1951, No. 269, § 4; A.S.A. 1947, § 19-3526.

**Cross References.** Form of bonds, § 19-9-101.

### **14-57-607. Bonds payable from meter revenues.**

(a) Bonds issued under the provisions of this subchapter shall be payable solely from the net revenues derived by the municipality from the ownership and operation of the parking meters, which net revenues may be pledged for the payment of these bonds.

(b)(1) The revenue bonds shall not in any event constitute an indebtedness of the municipality within the meaning of the constitutional provisions or limitations.

(2) It shall be plainly stated on the face of each bond that the bond has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

**History.** Acts 1951, No. 269, § 5; A.S.A. 1947, § 19-3527.

### **14-57-608. Pledge not to discontinue operation of meters.**

A municipality issuing revenue bonds for the payment of which it pledges the net revenues derived from the ownership and operation of parking meters shall, by the favorable vote at the election for the purpose of issuing the revenue bonds, be construed to have made a binding contract with the holders of the bonds that the municipality will not remove or discontinue the operation of the parking meters until the revenue bonds, and all interest thereon, for the payment of which the net revenues have been pledged, have been paid in full.

**History.** Acts 1951, No. 269, § 6; A.S.A. 1947, § 19-3528.



**14-57-609. Default in payment of bonds.**

(a) If there is a default in the payment of the principal of, or interest on, any of the revenue bonds authorized by this subchapter, any court having jurisdiction, in any proper action, may appoint a receiver to take charge of and operate the parking meters, with power to charge and collect rates sufficient to provide for the payment of the bonds, and interest thereon, after providing for the payment, if any, of the operating expenses of the property, and to apply the income and revenues derived from the property in conformity with this subchapter and the ordinance providing for the issuance of the bonds.

(b) When the default has been cured, the receivership shall be ended.

(c) This suit may be brought by the holder of any bond issued under the provisions of this subchapter or of any coupon representing interest accrued thereon.

**History.** Acts 1951, No. 269, § 7;  
A.S.A. 1947, § 19-3529.

**14-57-610. Acceleration of maturities — Priorities.**

(a) The ordinance authorizing the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue, or upon failure to meet any sinking fund requirements, or in any other event stipulated in the ordinance; and such provisions will be binding.

(b) The priorities as between successive issues of revenue bonds may also be controlled by the provisions of the ordinance.

**History.** Acts 1951, No. 269, § 8;  
A.S.A. 1947, § 19-3530.

**SUBCHAPTER 7 — CITY OR TOWN VEHICLE TAX****SECTION.**

- 14-57-701. Penalty.
- 14-57-702. Authority to levy.
- 14-57-703. Other taxation prohibited.
- 14-57-704. Special election required.
- 14-57-705. Classification of vehicles.
- 14-57-706. Maximum tax.
- 14-57-707. Date due.

**SECTION.**

- 14-57-708. Delinquent payment.
- 14-57-709. Vehicles acquired after July 1.
- 14-57-710. Payment to one municipality only.
- 14-57-711. Collection of and receipt for tax.
- 14-57-712. Disposition of proceeds.

**Cross References.** Municipal motor vehicle tax, § 26-78-101.

**Effective Dates.** Acts 1969, No. 88, § 9: Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities and towns in the State of Arkansas are in

great need of additional revenues to construct and maintain streets and roads in such cities and towns; that the provisions of Act 446 of 1965, as amended, are burdensome and hamper the cities and towns in the levying of additional vehicle taxes to obtain these needed revenues; and that

in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being

necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

### RESEARCH REFERENCES

C.J.S. 87 C.J.S., Towns, §§ 155, 161.

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#### 14-57-701. Penalty.

(a) Any owner of any vehicle, delinquent in the payment of the city or town vehicle tax for more than five (5) months, who thereafter shall use and operate any such vehicle upon the public roads, streets, and other public ways within the city or town levying the vehicle tax, or who shall knowingly permit it to be so used and operated by another, shall be guilty of a misdemeanor. Upon conviction, he shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each violation.

(b) The fine so assessed shall be in addition to the tax and penalty for delinquent payment.

**History.** Acts 1969, No. 88, § 4; A.S.A. 1947, § 19-3509.

#### 14-57-702. Authority to levy.

(a) Notwithstanding the provisions of §§ 26-78-102 — 26-78-108 and in addition to such taxes as may be levied by the State of Arkansas for the privilege of using and operating motor vehicles on the public roads and highways of this state, any city of the first or second class and any incorporated town are authorized to levy an annual tax upon the owners of vehicles for the privilege of using and operating a motor vehicle upon the public roads, streets, and other public ways in the city or town.

(b) The levy of the tax authorized by this section shall be, by ordinance, duly adopted by the governing body of the city or town.

(c) The tax authorized in this section to be levied shall be designated and known as the "city or town vehicle tax."

(d) Each levy by the governing body of the city or town shall be for collection during the calendar year following the year in which the levy is made, and each year thereafter, until the tax is amended or repealed by the governing body of the city or town.

**History.** Acts 1969, No. 88, § 1; A.S.A. 1947, § 19-3506.

**14-57-703. Other taxation prohibited.**

Any city of the first or second class or any incorporated town levying and collecting a vehicle tax under the provisions of this subchapter shall not be entitled to levy and collect a vehicle tax under the provisions of §§ 26-78-102 — 26-78-108, relating to motor vehicle tax for local highways.

**History.** Acts 1969, No. 88, § 3; A.S.A. 1947, § 19-3508.

**14-57-704. Special election required.**

(a) Before the vehicle tax levied by the governing body of any city of the first or second class or incorporated town upon vehicle owners residing in the city or town may be collected, the mayor shall call a special election. This election shall be held not less than twenty (20) days nor more than thirty (30) days from the date of the adoption of the levy of the tax by the governing body of the city or town, at which the qualified electors of the city or town shall vote on the question of the levy of the tax.

(b)(1) If, at the special election, a majority of the qualified electors of the city or town voting on the issue shall vote for the levy of the tax, then the tax may be thereafter levied in the city or town in the manner authorized in this subchapter and it shall not be necessary that an election be called again in the city or town on the question of levying the tax.

(2) If a majority of the qualified electors of the city or town voting on the issue at the special election shall vote against the levy of the tax, then the tax shall not be levied in the city or town. However, the governing body of the city or town, at any time after the expiration of one (1) year from the election in the city or town, may propose the levy of the tax, and the election thereon shall be called as provided in this section.

(c) Special elections held pursuant to this section shall be conducted in accordance with the election laws of this state, and the form of the ballot, the method of voting, and the counting, tabulation, and certification of the election results shall be in the manner provided by law.

**History.** Acts 1969, No. 88, § 2; A.S.A. 1947, § 19-3507.

**14-57-705. Classification of vehicles.**

(a) Under this subchapter, the ordinance of the governing body of a city or town may contain therein a classification of vehicles by types and the rate of tax levy, stated in dollars and cents, to be collected from the owners of the vehicles coming within these classifications.

(b) No such classification shall, at the time of the adoption of the ordinance, include any vehicle for the use of which a state tax or fee for



the registration or licensing of motor vehicles is not, at the time, levied upon the owner.

**History.** Acts 1969, No. 88, § 3; A.S.A. 1947, § 19-3508.

#### **14-57-706. Maximum tax.**

The maximum city or town vehicle tax which may be levied and collected shall not exceed five dollars (\$5.00) per year per vehicle, irrespective of its classification.

**History.** Acts 1969, No. 88, § 3; A.S.A. 1947, § 19-3508.

#### **14-57-707. Date due.**

The city or town vehicle tax shall be due and payable, without penalty, during the month of January of the calendar year following the year in which the levy is made.

**History.** Acts 1969, No. 88, § 4; A.S.A. 1947, § 19-3509.

#### **14-57-708. Delinquent payment.**

Penalty for delinquent payment of the city or town vehicle tax shall be one dollar (\$1.00) per vehicle per month for each month's delinquency.

**History.** Acts 1969, No. 88, § 4; A.S.A. 1947, § 19-3509.

#### **14-57-709. Vehicles acquired after July 1.**

(a) The owner of any vehicle first acquired or first used in the city or town after July 1 of the taxable year shall be required to pay only one-half ( $\frac{1}{2}$ ) of the annual rate of the city or town vehicle tax for the remainder of the calendar year. The tax may be paid, without penalty, during the thirty-day period following the date of first acquisition or first use.

(b) No vehicle tax shall be required of the owner if the vehicle tax for the particular year has been paid by a former owner, whether or not in the same city or town.

**History.** Acts 1969, No. 88, § 4; A.S.A. 1947, § 19-3509.

**14-57-710. Payment to one municipality only.**

The owner of a vehicle, having paid the city or town vehicle tax in any city or town for a particular year, shall not be required to pay the vehicle tax for the use of the same vehicle in any other city or town for the same year.

**History.** Acts 1969, No. 88, § 3; A.S.A. 1947, § 19-3508.

**14-57-711. Collection of and receipt for tax.**

(a) Any city or town levying a vehicle tax under the provisions of this subchapter shall designate, by ordinance, an official to collect the tax.

(b)(1) The official shall use consecutively numbered receipts, printed in duplicate, to acknowledge payment of the tax.

(2) Each receipt shall have printed on it:

(A) The name of the city or town;

(B) The name of the tax;

(C) The year of the tax;

(D) Space for indicating the name and address of the taxpayer;

(E) The date of payment;

(F) The amount of tax;

(G) The amount of penalty;

(H) The total amount collected;

(I) The make and model of the vehicle;

(J) The state motor vehicle license number at the time attached to the vehicle; and

(K) Space for the signature of the official collecting the tax.

(c) At the time of issuing his receipt, the official shall also deliver to the taxpayer a windshield sticker, metal tag, or other type of identification to be attached to the vehicle by the owner.

(d) A new series of receipts shall be issued for each year's tax.

(e)(1) A separate receipt shall be issued for each vehicle, the original of which shall be given to the taxpayer at the time of the payment of the tax.

(2) The duplicate receipt shall be retained by the official for accounting and auditing purposes.

**History.** Acts 1969, No. 88, § 5; A.S.A. 1947, § 19-3509.1.

**14-57-712. Disposition of proceeds.**

(a) All tax, interest, and penalties collected under the provisions of this subchapter shall be deposited in a separate bank account to be maintained by the city or town. From the proceeds shall be paid the cost of duplicate receipts and windshield stickers.

(b) All proceeds remaining after the payment of the expenses shall be used as follows:

- (1) Fifty percent (50%) of the proceeds shall be used for the payment of salaries of law enforcement personnel and personnel of the fire department; and
- (2) Fifty percent (50%) of the proceeds shall be used for the maintenance, construction, and reconstruction of streets and other public ways in the town or municipality.

**History.** Acts 1969, No. 88, § 6; A.S.A. 1947, § 19-3509.2.

**Cross References.** Use of motor vehicle tax revenues, §§ 26-78-108, 26-78-109.

CHAPTER 58

FISCAL AFFAIRS OF CITIES AND INCORPORATED TOWNS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BUDGETS IN MAYOR-COUNCIL MUNICIPALITIES.
3. CITIES OF THE FIRST CLASS GENERALLY.
4. BORROWING OF MONEY BY CITIES OF THE FIRST CLASS.
5. FINANCIAL AID TO SCHOOL DISTRICTS.
6. OUTSTANDING MUNICIPAL WARRANTS.
7. REVOLVING CASH FUNDS. [REPEALED.]
8. BONDING OF MUNICIPAL OFFICERS AND EMPLOYEES. [REPEALED.]
9. ANNUAL AUDITS. [REPEALED.]

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**Cross References.** Local audits, § 10-4-201 et seq.

RESEARCH REFERENCES

**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 579 et seq., 637 et seq. 87 C.J.S., Towns, §§ 113-172.

**C.J.S.** 64 C.J.S., Mun. Corp., § 1833 et seq.

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SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-58-101. Audit by independent accountant.
- 14-58-102. [Repealed.]

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**Cross References.** Levy of tax for pensions in cities of first and second class, § 24-11-404.

**Effective Dates.** Acts 1977, No. 160, § 3: July 1, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that under the Arkansas Constitution laws enacted by the General Assembly without an emergency clause become effective ninety days after adjournment sine die or recess in excess of ninety days; that it is essential to the proper and effective administration and application of this Act that it be given



effect on July 1, 1977, and that in the event of an extension of the regular session, the delay in the effective date of this Act beyond July 1, 1977, would be highly detrimental to the proper administration and enforcement of the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1985, No. 15, § 4: effective for audits of the 1985 calendar year and thereafter.

### 14-58-101. Audit by independent accountant.

(a)(1) The audit of every municipal corporation shall be made by the Division of Legislative Audit or other independent persons licensed to practice accounting by the Arkansas State Board of Public Accountancy, to be selected by the governing body of the municipality.

(2) "Independence," for purposes of this section will be defined as not being otherwise in the service of the municipality and being without bias with respect to the municipality and having an impartiality that recognizes fairness to all that might rely upon the independent auditor's report.

(b) Any statutorily required audit of a municipality performed by an independent accountant shall include, as a minimum and as an integral part of the annual financial report, a review and comments on substantial compliance with each of the following Arkansas statutes:

(1) Municipal Accounting Law, § 14-59-101 et seq.;

(2) Municipal court and police department, §§ 16-10-201 — 16-10-210;

(3) Bonding of municipal officers and employees, §§ 19-1-401 — 19-1-405;

(4) Improvement contract over \$10,000, §§ 22-9-202 — 22-9-204;

(5) Budgets, purchases over \$2,000; payments of claims, etc., §§ 14-58-201 — 14-58-203, 14-58-301 — 14-58-308;

(6) Investment of public funds, §§ 19-1-501 — 19-1-504; and

(7) Deposit of public funds, §§ 19-8-101 — 19-8-107.

(c) The governing body of the municipality shall require the independent accountant to present the annual financial report in conformity with the format and guidelines as prescribed by the appropriate professional organizations such as the National Council on Governmental Accounting and the American Institute of Certified Public Accountants.

**History.** Acts 1977, No. 160, § 1; 1985, No. 15, § 1; A.S.A. 1947, § 19-4416.1.

**A.C.R.C. Notes.** The reference in (b)(5) to "purchases over \$2,000" refers to § 14-

58-303 and the amount in that section was changed to \$10,000 by Acts 1995, No. 812, § 1.

14-58-102. [Repealed.]

**Publisher’s Notes.** This section, concerning transfer of balances in bond redemption fund to general revenue fund, was repealed by Acts 1997, No. 214, § 1.

The section was derived from Acts 1973, No. 51, § 1; 1977, No. 276, § 1; A.S.A. 1947, § 17-607; Acts 1987, No. 285, § 1; 1987, No. 604, § 1.

SUBCHAPTER 2 — BUDGETS IN MAYOR-COUNCIL MUNICIPALITIES

SECTION.	SECTION.
14-58-201. Annual submission.	14-58-203. Appropriations and changes.
14-58-202. Adoption.	

**Effective Dates.** Acts 1959, No. 28, § 14; Feb. 10, 1959. Emergency clause provided: “Whereas, the municipal purchasing laws of cities of the first class have not been revised since the year 1885, and whereas, it is necessary to revise said purchasing laws and other matters in

order to save the unnecessary expenditure of taxpayers money, and this Act being necessary for the immediate protection of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.”

14-58-201. Annual submission.

On or before December 1 of each year, the mayor of all cities and incorporated towns having the mayor-council form of government shall submit to the governing body of the city or town, for its approval or disapproval, a proposed budget for operation of the city or town from January 1 to December 31 of the forthcoming year.

**History.** Acts 1959, No. 28, § 1; 1981, No. 344, § 1; A.S.A. 1947, § 19-4421.

14-58-202. Adoption.

Under this subchapter, the governing body of the municipality shall, on or before February 1 of each year, adopt a budget for operation of the city or town.

**History.** Acts 1959, No. 28, § 2; 1981, No. 344, § 2; A.S.A. 1947, § 19-4422.

14-58-203. Appropriations and changes.

- (a) The approval by the municipal governing body of the budget under this subchapter shall, for the purposes of the budget from time to time amount to an appropriation of funds which are lawfully applicable to the items therein contained.
- (b) The governing body may alter or revise the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, subject to the following exceptions:

(1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;

(2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.

**History.** Acts 1959, No. 28, § 3; A.S.A. 1947, § 19-4423.

### CASE NOTES

**Cited:** Hartwick v. Thorne, 300 Ark. 502, 780 S.W.2d 531 (1989).

## SUBCHAPTER 3 — CITIES OF THE FIRST CLASS GENERALLY

### SECTION.

- 14-58-301. Administration of provisions.
- 14-58-302. Annual report by mayor.
- 14-58-303. Purchases and contracts generally.
- 14-58-304. Purchase of insurance.
- 14-58-305. Payment of claims.

### SECTION.

- 14-58-306. Disposal of municipal supplies, etc.
- 14-58-307. Annual audit.
- 14-58-308. Bonds of officers and employees.

**Effective Dates.** Acts 1959, No. 28, § 14: Feb. 10, 1959. Emergency clause provided: "Whereas, the municipal purchasing laws of cities of the first class have not been revised since the year 1885, and whereas, it is necessary to revise said purchasing laws and other matters in order to save the unnecessary expenditure of taxpayers money, and this Act being necessary for the immediate protection of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 154, § 2: Feb. 20, 1979. Emergency clause provided: "Whereas, a

maximum dollar amount was established for first class Mayor-Council cities in 1959 which has become impractical and obsolete due to inflation since that time; and these unnecessary restrictions are not placed on cities operating under the City Administrator or City Manager forms of government or Mayor-Council cities of the second class or incorporated towns. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate protection of the public peace, health and safety shall take effect immediately on its passage and approval."

Acts 1985, No. 745, § 4: Aug. 1, 1985.

### 14-58-301. Administration of provisions.

(a) For the purpose of assisting the mayor of a first class city in carrying out the provisions of this subchapter, the municipal governing body may appoint one (1) or more committees, to be composed from its membership, or, by ordinance, it may create one (1) or more departments, fixing the compensation and manner of employment for the employees thereof.

(b) The persons appointed to fill any offices or to head any departments shall be responsible to the mayor and act under his direction.



**History.** Acts 1959, No. 28, § 8; A.S.A. 1947, § 19-4428.

#### **14-58-302. Annual report by mayor.**

(a) The mayor of a first class city shall prepare and submit to the municipal governing body within sixty (60) days after the end of each fiscal year a complete report on the finances and administrative activities of the city during the previous fiscal year.

(b) The mayor shall also keep the governing body advised as to the financial condition and future needs of the city and make such recommendations as to him may be desirable.

**History.** Acts 1959, No. 28, § 4; A.S.A. 1947, § 19-4424.

#### **14-58-303. Purchases and contracts generally.**

(a) In a city of the first class, the mayor or his duly authorized representative shall have exclusive power and responsibility to make purchases of all supplies, apparatus, equipment, materials, and other things requisite for public purposes in and for the city and to make all necessary contracts for work or labor to be done or material or other necessary things to be furnished for the benefit of the city, or in carrying out any work or undertaking of a public nature therein.

(b)(1) The municipal governing body shall provide, by ordinance, the procedure for making all purchases which do not exceed the sum of ten thousand dollars (\$10,000).

(2)(A)(i) Where the amount of expenditure for any purpose or contract exceeds the sum of ten thousand dollars (\$10,000), the mayor or his duly authorized representative shall invite competitive bidding thereon by legal advertisement in any local newspaper.

(ii) Bids received pursuant to the advertisement shall be opened and read on the date set for receiving the bids in the presence of the mayor or his duly authorized representative.

(iii) The mayor or his duly authorized representative shall have exclusive power to award the bid to the lowest responsible bidder, but may reject any and all bids received.

(B) The governing body, by ordinance, may waive the requirements of competitive bidding in exceptional situations where this procedure is deemed not feasible or practical.

**History.** Acts 1959, No. 28, § 5; 1979, No. 154, § 1; 1985, No. 745, § 3; A.S.A. 1947, § 19-4425; Acts 1995, No. 812, § 1. (\$10,000)" for "five thousand dollars (\$5,000)" in (b)(1) and (b)(2)(A)(i); rewrote (b)(2)(A)(iii); and deleted former (b)(2)(A)(iv).

**Amendments.** The 1995 amendment substituted "ten thousand dollars

**RESEARCH REFERENCES**

**Ark. L. Rev.** The Contractual and Quasi-Contractual Liability of Arkansas Local Government Units, 20 Ark. L. Rev. 292.

**CASE NOTES****ANALYSIS**

Contracts for labor or materials.  
Contracts for professional services.  
Lowest responsible bidders.  
Purchase of supplies, etc.  
Void contracts.

**Contracts for Labor or Materials.**

It was against public policy to permit a bank of which the mayor of a city was a stockholder and president to take an assignment of the claim of a contractor against the city for the price of work which he had performed for the city and which work must have been inspected and accepted by the city by a board of which the mayor was chairman. *People's Sav. Bank v. Big Rock Stone & Constr. Co.*, 81 Ark. 599, 99 S.W. 836 (1907) (decision under prior law).

Contractor was entitled to recover fair value of rest rooms installed in city building though city council bypassed board of public works in letting contract where city accepted improvements and ratified contract by ordinance. *Lykes v. City of Texarkana*, 223 Ark. 287, 265 S.W.2d 539 (1954) (decision under prior law).

A city is required to solicit bids for all contracts except where there is an affirmative showing, by enactment of a separate ordinance, that the solicitation of bids is not feasible or practical. *Klinger v. City of Fayetteville*, 293 Ark. 128, 732 S.W.2d 859 (1987).

**Contracts for Professional Services.**

Contracts for professional services are not exempt from the competitive bidding requirements of this section or § 14-47-138. *Klinger v. City of Fayetteville*, 293 Ark. 128, 732 S.W.2d 859 (1987).

**Lowest Responsible Bidders.**

Under Arkansas law governing competitive bidding on public contracts, the low-

est responsible bidder in compliance with the bidding specifications and procedures has a legitimate expectation in being awarded the contract once the governmental body makes a decision to award the contract on which bids were solicited. *L & H San., Inc. v. Lake City San., Inc.*, 585 F. Supp. 120 (E.D. Ark. 1984), *aff'd*, 769 F.2d 517 (8th Cir. 1985).

Complaint held to state cause of action on question of competitive bidding. *Smith v. City of Springdale*, 291 Ark. 63, 722 S.W.2d 569 (1987).

**Purchase of Supplies, Etc.**

Contract for sale of truck and flusher to city without compliance with former statute was held void. *City of Little Rock v. White Co.*, 193 Ark. 837, 103 S.W.2d 58 (1937) (decision under prior law).

City could not have used cleaning equipment purchased under invalid contract, contract for things other than necessary expenses, and thereby avoid payment for the use of the equipment on ground revenue was insufficient, but if the payment would exceed the revenue for the year the contract was made, city could not pay. But where evidence did not show that revenue was insufficient to pay reasonable rent of street cleaning equipment received under invalid contract at the time it was used, city was held liable for rental. *City of Little Rock v. White Co.*, 193 Ark. 837, 103 S.W.2d 58 (1937) (decision under prior law).

**Void Contracts.**

No recovery could be had under a contract which former statute declared to be null and void. *Ridge v. Miller*, 185 Ark. 461, 47 S.W.2d 587 (1932) (decision under prior law); *Cosgrove v. City of W. Memphis*, 327 Ark. 324, 938 S.W.2d 827 (1997).

**14-58-304. Purchase of insurance.**

The purchase of all types of insurance by cities of the first class shall be governed by the provisions of § 14-58-303.

**History.** Acts 1981, No. 926, § 1;  
A.S.A. 1947, § 19-4425.1.

**14-58-305. Payment of claims.**

(a) In a city of the first class, the mayor or his duly authorized representative may approve for payment out of funds previously appropriated for that purpose, or disapprove, any bills, debts, or liabilities asserted as claims against the city.

(b) The municipal governing body shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of such bills, debts, or liabilities exceeding that amount shall require the confirmation of the governing body.

**History.** Acts 1959, No. 28, § 6; A.S.A.  
1947, § 19-4426.

**14-58-306. Disposal of municipal supplies, etc.**

(a) In a city of the first class, the mayor or his duly authorized representative may sell or exchange any municipal supplies, materials, or equipment.

(b) The municipal governing body shall, by ordinance, establish a maximum amount which may be sold or exchanged. No item or lot of supplies, material, or equipment, which is to be disposed of as one (1) unit, shall be sold without competitive bidding if the amount exceeds the maximum provided by ordinance unless the mayor shall certify in writing to the governing body that, in his opinion, the fair market value of the item or lot is less than the amount established by ordinance as indicated.

**History.** Acts 1959, No. 28, § 7; A.S.A.  
1947, § 19-4427.

**14-58-307. Annual audit.**

In cities of the first class, the municipal governing body shall have the financial affairs of the city audited annually by an independent certified public accountant, who is not otherwise in the service of the city, or by the Division of Legislative Audit of the State of Arkansas.

**History.** Acts 1959, No. 28, § 9; A.S.A.  
1947, § 19-4429.



**14-58-308. Bonds of officers and employees.**

(a) All officers and employees of a city of the first class handling financial matters for the city shall furnish a fidelity bond in such amount, on such form, and with such security as may be approved by the municipal governing body.

(b) The premiums on these bonds shall be paid by the city.

**History.** Acts 1959, No. 28, § 10; A.S.A. 1947, § 19-4430.

**Cross References.** Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

**SUBCHAPTER 4 — BORROWING OF MONEY BY CITIES OF THE FIRST CLASS****SECTION.**

14-58-401. Authority generally.

14-58-402. Assignment of uncollected property tax.

**SECTION.**

14-58-403. Assignments not to affect warrants — Priority.

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**Cross References.** Borrowing and bankruptcy, § 14-74-101 et seq.

**Effective Dates.** Acts 1931, No. 233, § 5: approved Mar. 26, 1931. Emergency clause provided: "In view of the existing financial depression many cities of the first class are finding it impossible to finance their operation without anticipat-

ing tax collections, and are in such urgent need of immediate assistance that an emergency is hereby declared to exist; and, therefore, this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

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**14-58-401. Authority generally.**

(a) Upon a vote of two-thirds ( $\frac{2}{3}$ ) of the members of the city council, cities of the first class may borrow money for the ordinary operating expenses of the city after January 1 of each year in anticipation of the property tax collections collectible in that year.

(b) The sum so borrowed shall not exceed, in the aggregate, fifty percent (50%) of the amount of city taxes extended on the county tax books for collections during the year.

(c) These cities shall have power to issue to the lender thereof negotiable but noninterest-bearing evidences of indebtedness for moneys so borrowed, to be executed by the mayor and city clerk in behalf of the city.

**History.** Acts 1931, No. 233, § 1; Pope's Dig., § 9820; A.S.A. 1947, § 19-4406.

**14-58-402. Assignment of uncollected property tax.**

(a)(1) Cities of the first class may further assign to the lender or to a trustee for the lender as security for the repayment of borrowed moneys, the uncollected general municipal property taxes then extended upon the county tax books to be collected during the current year.

(2) The assignment shall be executed in the name and in behalf of the city by the mayor and city clerk, duly acknowledged and recorded on the real estate mortgage record in the county or judicial circuit where the city may be situated. A certified copy thereof shall be delivered by the lender or trustee for him to the county collector of revenue.

(b)(1) As the city taxes are collected, the county collector may pay them over, less his commission, to the lender of the money or trustee for him, upon surrender to the collector of a note or certificate of indebtedness secured by the assignment, which instrument shall be accepted by the city as the equivalent of money in its settlement with the collector.

(2)(A) At the time of paying the money over to the lender or his trustee, the collector shall cause him, either by noting on the margin of record of the assignment attested by the recorder or by a separate duly acknowledged instrument, to acknowledge payment of the sum so paid.

(i) If, when the collector makes his settlement with the county court, a sufficient sum of city taxes has not been collected to pay in full the debt secured thereby, the balance of funds on hand applicable to the debt shall be paid over by the collector to the assignee and credited against the debt.

(ii) The payment shall be shown of record as specified in this section.

(iii) The unpaid balance shall constitute a lien on redemption collections from the assigned taxes by the county clerk and shall, at all times, constitute a general obligation of the city, payable from any fund not appropriated by law to some other exclusive purpose.

**History.** Acts 1931, No. 233, § 2;  
Pope's Dig., § 9821; A.S.A. 1947, § 19-4407.

**14-58-403. Assignments not to affect warrants — Priority.**

(a) Since the Arkansas Constitution prohibits the issuance by a municipal corporation of any interest-bearing evidence of indebtedness for the purpose mentioned in this subchapter, no evidence of indebtedness bearing interest is authorized by this subchapter.

(b)(1) Since the Arkansas Constitution further provides that municipal corporation warrants may be used in payment of municipal taxes, the assignment of taxes provided for in this subchapter shall be without prejudice to the rights of warrant holders to use municipal warrants in payment of municipal taxes.

(2)(A) Unless this provision is held unconstitutional by the courts, the written assignment of taxes provided for in this subchapter may stipulate that the city will use the funds so borrowed for operating expenses and that no warrant will be thereafter issued by the city in excess of an aggregate amount capable of being paid out of the funds so borrowed and out of revenues of the city arising from some other source than the general municipal property tax until the borrowed moneys secured by the assignment have been repaid in full, to the end that, after making the assignment, no new city warrants capable of being used in payment of the municipal property tax shall come into existence until the indebtedness has been paid.

(B) The city may contract as to right of priority or payment when more than one (1) assignment of the taxes is made.

**History.** Acts 1931, No. 233, § 3; Pope's Dig., § 9822; A.S.A. 1947, § 19-4408.

tion warrants used in payment of municipal taxes, Ark. Const., Art. 16, § 10.

**Cross References.** Municipal corpora-

## SUBCHAPTER 5 — FINANCIAL AID TO SCHOOL DISTRICTS

### SECTION.

14-58-501. Authority generally.

14-58-502. Funds from which payable.

14-58-503. Terms of assistance.

### SECTION.

14-58-504. Financial aid to state colleges and universities.

14-58-505. Financial aid.

**Effective Dates.** Acts 1931, No. 229, § 4: approved Mar. 26, 1931. Emergency clause provided: "Owing to the fact that many public schools are in urgent need of

finances and financial assistance an emergency is hereby declared and this act shall take effect and be in full force from and after its passage."

### 14-58-501. Authority generally.

Incorporated towns and cities of the first or second class in the State of Arkansas are empowered and authorized annually to grant financial aid to any public school district in which the town or city is located for the purpose of assisting the school district in retiring school bonds or paying the operating expenses of the district.

**History.** Acts 1931, No. 229, § 1; Pope's Dig., § 9652; A.S.A. 1947, § 19-4409.

### 14-58-502. Funds from which payable.

Financial aid granted and paid to public school districts shall be paid out of any funds received by the town or city. However, payments shall not be made from the regular city taxes collected by the county or state for the town or city.



**History.** Acts 1931, No. 229, § 2; Pope's § 5, provides that to the extent § 14-58-Dig., § 9653; A.S.A. 1947, § 19-4410. 502 conflicts with § 26-73-114, § 14-58-A.C.R.C. Notes. Acts 1993, No. 1070, 502 is superseded.

### **14-58-503. Terms of assistance.**

(a) The incorporated town or city council granting financial aid shall do so by resolution which shall fix the amount and time of the payments.

(b) The resolution shall be effective for the period of twelve (12) months.

(c) The payments shall not exceed the annual revenue from which the funds are paid.

**History.** Acts 1931, No. 229, § 3; Pope's Dig., § 9654; A.S.A. 1947, § 19-4411.

### **14-58-504. Financial aid to state colleges and universities.**

(a) Cities of the first or second class and incorporated towns in the State of Arkansas shall be empowered and authorized annually to grant financial aid to any state-supported college or university which is located in the city or town or which has facilities located within the city or town. The grant of financial aid shall be for the purpose of aiding or assisting the college or university in retiring any bonded indebtedness on any building or facilities within the city or town or for the purpose of paying for the operating expenses of the college or university for programs or facilities located within the city or town.

(b)(1) The governing body of the city or incorporated town granting financial aid to a state-supported college or university shall do so by ordinance, which shall specify the time and amount of the payments to be made, the name of the college or university receiving the funds, and the source of the funds.

(2) The ordinance shall not be effective for more than a twelve-month period of time.

(c) The financial aid granted and paid to the state-supported college or university shall be paid out of donations or gifts received by the city or town for general purposes. No moneys of the city or town arising from a tax levied for a specific purpose shall be used for any grant of financial aid to a college or university, unless the tax has been levied for the specific purpose of granting financial aid to the college or university.

**History.** Acts 1993, No. 367, §§ 1-3.

**14-58-505. Financial aid.**

(a) Incorporated towns and cities of the first or second class, pursuant to an ordinance properly and lawfully adopted by their governing bodies, are empowered and authorized to annually grant financial aid to any public postsecondary educational institution located within their borders for the purpose of assisting the institution in paying its lawful expenses of operation.

(b) The ordinance shall be effective for a period of twelve (12) months.

**History.** Acts 1993, No. 866, § 1.

**Publisher's Notes.** Acts 1993, No. 866,  
§ 1, is also codified as § 14-16-114.

**SUBCHAPTER 6 — OUTSTANDING MUNICIPAL WARRANTS****SECTION.**

14-58-601. Duty to order presentment.

14-58-602. Annual call permitted.

14-58-603. Notice of time and place for  
redemption, etc.

**SECTION.**

14-58-604. Failure to present.

14-58-605. Rejection of indebtedness.

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**Effective Dates.** Acts 1893, No. 97,  
§ 6: effective on passage.

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**14-58-601. Duty to order presentment.**

Whenever the council of any city or incorporated town in this state may deem it expedient to call in the outstanding warrants of the city or incorporated town in order to redeem, cancel, reissue, or classify them, or for any other lawful purpose whatsoever, it shall be the duty of the council of the city or town to make an order for that purpose fixing the time for the presentation of the warrants, which shall be at least three (3) months from the date of the order.

**History.** Acts 1893, No. 97, § 1, p. 169;  
C. & M. Dig., § 7584; Pope's Dig., § 9665;  
A.S.A. 1947, § 19-4401.

**CASE NOTES****Power to Call.**

All municipal corporations have the power to call in outstanding warrants for cancellation, reissuance, or classification,

or for any lawful purpose whatever. *Eureka Fire Hose Co. v. Furry*, 126 Ark. 231, 190 S.W. 427 (1916).

**14-58-602. Annual call permitted.**

Annually, the council of any city or incorporated town may call in the outstanding warrants of the city or incorporated town or the floating evidence of indebtedness of the city or town for the purpose of cancelling and reissuing them.

**History.** Acts 1893, No. 97, § 4, p. 169;  
C. & M. Dig., § 7587; Pope's Dig., § 9668;  
A.S.A. 1947, § 19-4404.

**14-58-603. Notice of time and place for redemption, etc.**

It shall be the duty of the clerk or recorder of the council of the city or incorporated town to notify the holders of the warrants to present them to the council at the time and place fixed for the redemption, cancellation, reissuance, or classification of the warrants, or for any other purpose whatever specified in the order of the council, by putting up, at the county courthouse door and at the election precincts in each ward in the city or town a true copy of the order of the council in the premises. This order shall be posted at least thirty (30) days before the time appointed by the order of the city or town council for the presentation of the warrants. It shall be published in newspapers printed and published in the State of Arkansas for two (2) weeks in succession, the last insertion to be at least thirty (30) days before the time fixed by the council for the presentation of the warrants.

**History.** Acts 1893, No. 97, § 2, p. 169;  
C. & M. Dig., § 7585; Pope's Dig., § 9666;  
A.S.A. 1947, § 19-4402.

**14-58-604. Failure to present.**

All persons who hold any warrants of a city or incorporated town and neglect or refuse to present them as required by the order of the city or town council and the notice prescribed by § 14-58-603 shall thereafter be forever debarred from deriving any benefits from their claims.

**History.** Acts 1893, No. 97, § 3, p. 169;  
C. & M. Dig., § 7586; Pope's Dig., § 9667;  
A.S.A. 1947, § 19-4403.

**14-58-605. Rejection of indebtedness.**

Whenever the warrants called in shall be presented to the municipal council, it shall be the duty of the council to examine them thoroughly and to reject all such evidences of indebtedness as in their judgment their city or town is not justly and legally bound to pay, subject to appeal to the circuit court.



**History.** Acts 1893, No. 97, § 5, p. 169;  
C. & M. Dig., § 7588; Pope's Dig., § 9669;  
A.S.A. 1947, § 19-4405.

## SUBCHAPTER 7 — REVOLVING CASH FUNDS

### SECTION.

14-58-701. [Repealed.]

14-58-702 — 14-58-704. [Repealed.]

### 14-58-701. [Repealed.]

**Publisher's Notes.** This section, concerning authority to create the fund, was repealed by Acts 1995, No. 555, § 1. The

section was derived from Acts 1949, No. 40, § 1; A.S.A. 1947, § 19-4417.

### 14-58-702 — 14-58-704. [Repealed.]

**Publisher's Notes.** These sections, concerning deposit of fund in bank, disbursements from fund and appropriations for fund, were repealed by Acts 1997, No. 214, § 1. They were derived from the following sources:

14-58-702. Acts 1949, No. 40, § 2;  
A.S.A. 1947, § 19-4418.

14-58-703. Acts 1949, No. 40, § 3;  
A.S.A. 1947, § 19-4419.

14-58-704. Acts 1949, No. 40, § 4;  
A.S.A. 1947, § 19-4420.

## SUBCHAPTER 8 — BONDING OF MUNICIPAL OFFICERS AND EMPLOYEES

### SECTION.

14-58-801 — 14-58-805. [Repealed.]

### 14-58-801 — 14-58-805. [Repealed.]

**Publisher's Notes.** This subchapter, concerning bonding of municipal officers and employees, was repealed by Acts 1995, No. 555, § 1. The subchapter was derived from the following sources:

14-58-801. Acts 1959, No. 155, § 3;  
A.S.A. 1947, § 19-4433.

14-58-802. Acts 1959, No. 155, § 1;  
1961, No. 105, § 1; A.S.A. 1947, § 19-4431.

14-58-803. Acts 1959, No. 155, § 1;  
1961, No. 105, § 1; A.S.A. 1947, § 19-4431.

14-58-804. Acts 1959, No. 155, § 2;  
A.S.A. 1947, § 19-4432.

14-58-805. Acts 1959, No. 155, § 1;  
1961, No. 105, § 1; A.S.A. 1947, § 19-4431.

## SUBCHAPTER 9 — ANNUAL AUDITS

### SECTION.

14-58-901, 14-58-902. [Repealed.]

14-58-901, 14-58-902. [Repealed.]

**Publisher’s Notes.** This subchapter, concerning annual audits, was repealed by Acts 1995, No. 555, § 1. The subchapter was derived from the following sources:

14-58-901. Acts 1949, No. 292, § 1; A.S.A. 1947, § 19-4414.  
14-58-902. Acts 1949, No. 292, § 2; A.S.A. 1947, § 19-4415.

CHAPTER 59  
MUNICIPAL ACCOUNTING LAW

- SECTION.
- 14-59-101. Title.
  - 14-59-102. Applicability.
  - 14-59-103. Exemption for other systems.
  - 14-59-104. Bank accounts.
  - 14-59-105. Prenumbered checks — Electronic funds transfers.
  - 14-59-106. Petty cash funds.
  - 14-59-107. Fixed asset and equipment records.
  - 14-59-108. Reconciliation of bank accounts.
  - 14-59-109. Prenumbered receipts.
  - 14-59-110. Cash receipts journals for cities.

- SECTION.
- 14-59-111. Cash disbursements journals for cities.
  - 14-59-112. Cash receipts journals for towns.
  - 14-59-113. Cash disbursements journals for towns.
  - 14-59-114. Maintenance and destruction of accounting records.
  - 14-59-115. Monthly treasurer’s report.
  - 14-59-116. Semiannual publication of financial statement.

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**Cross References.** Audit by independent accountant, § 14-58-101.  
Governmental Compliance Act, § 10-4-301 et seq.  
**Effective Dates.** Acts 1977, No. 308, § 3: Feb. 28, 1977. Emergency clause provided: “Whereas, there is a great deal of confusion and uncertainty as to the requirements for publication of financial information by the towns and cities of Ar-

kansas; and, whereas, it is essential that the citizens and qualified voters in the towns and cities have a periodical report of the financial condition of their local municipal government. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public health, welfare and safety, shall take effect immediately upon its passage and approval.”

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14-59-101. Title.

This chapter shall be known and cited as the “Arkansas Municipal Accounting Law of 1973.”

**History.** Acts 1973, No. 159, § 1; A.S.A. 1947, § 19-5301.

**14-59-102. Applicability.**

This chapter shall apply only to the general funds and street funds of the various municipalities of this state.

**History.** Acts 1973, No. 159, § 2;  
A.S.A. 1947, § 19-5302.

**14-59-103. Exemption for other systems.**

(a) In the event any municipality feels its system of bookkeeping is such that it equals or exceeds the basic system prescribed by this chapter, the municipality may request a review by the Legislative Joint Auditing Committee.

(b) Upon the committee's concurrence with these facts, it may issue a certificate to the municipality stating that the municipality's accounting system is of a degree of sophistication such that the basic requirements of this chapter are being met and exempting the municipality from the requirements of the particulars of the system prescribed by this chapter.

**History.** Acts 1973, No. 159, § 14;  
A.S.A. 1947, § 19-5314.

**14-59-104. Bank accounts.**

(a) All municipalities of this state receiving state aid in the form of either turnback of general revenues or highways revenues shall maintain all funds in depositories approved for such purposes by law.

(b) The municipalities shall maintain separate bank accounts for general funds and street funds.

(c) The accounts shall be maintained in the name of the municipality.

**History.** Acts 1973, No. 159, § 3;  
A.S.A. 1947, § 19-5303.

**14-59-105. Prenumbered checks — Electronic funds transfers.**

(a) All disbursements of municipal funds, except those described in this section and as noted in § 14-59-106, petty cash funds, are to be made by prenumbered checks drawn upon the bank account of that municipality.

(b) The checks shall be of the form normally provided by commercial banking institutions and shall contain as a minimum the following information:

- (1) Date of issue;
- (2) Check number;
- (3) Payee;
- (4) Amount both in numerical and written form; and
- (5) Signature of authorized disbursing officer of the city.

(c) The municipality shall maintain printer's certificates as to the numerical sequence of checks printed.



(d) Disbursements of municipal funds used for payment of salaries and wages of municipal officials and employees may be made by electronic funds transfer (EFT) provided that:

(1) The municipal employee or official responsible for such disbursements shall maintain a ledger containing at least the name, address and social security number of the employee receiving payment of salary or wages; the routing number from the bank in which the funds are held; the account number and the accounts clearing house trace number pertaining to the transfer; the date and amount transferred and proof that the employee has been notified of direct deposit of their salary or wages by EFT, and;

(2) No such disbursement may be made by EFT without written consent of the employee to whom direct deposit is made.

**History.** Acts 1973, No. 159, § 5; A.S.A. 1947, § 19-5305; Acts 1997, No. 543, § 1.

**A.C.R.C. Notes.** The format of subdivision (d)(1) does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to reformat the subdivision.

The Arkansas Code Revision Commission has found that there are multiple

punctuation errors in subsection (d). Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the errors.

**Amendments.** The 1997 amendment inserted "those described in this section and" following "municipal funds, except" in (a); and added (d).

## 14-59-106. Petty cash funds.

(a) Municipalities are permitted to establish petty cash funds, so long as the funds are maintained as set forth in this section.

(b)(1) The establishment of such a fund must be approved by the city council.

(2)(A) In establishing such a fund, a check is to be drawn upon the general fund of the municipality payable to "petty cash."

(B) That amount may be maintained in the municipal offices for the handling of small expenditures for items such as postage, light bulbs, delivery fees, etc.

(c)(1) A paid-out slip is to be prepared for each item of expenditure from the fund and signed by the person receiving the moneys.

(2) These paid-out slips shall be maintained with the petty cash. When the fund becomes depleted, the municipality may then draw another check payable to "petty cash" in an amount which equals the total paid-out slips issued. At that time, the paid-out slips shall be removed from the "petty cash fund," and utilized as invoice support for the check replenishing petty cash.

**History.** Acts 1973, No. 159, § 6; A.S.A. 1947, § 19-5306.

**14-59-107. Fixed asset and equipment records.**

(a)(1)(A) All municipalities shall establish and maintain, as a minimum, a listing of all fixed assets and equipment owned by the municipality.

(B) The listing shall contain as a minimum:

- (i) Property item number, if used by the municipality;
- (ii) Brief description;
- (iii) Serial number, if available;
- (iv) Location of property;
- (v) Vendor purchased from and the date of acquisition; and
- (vi) Cost of property.

(2) In lieu of maintaining such a list, the municipality may maintain an index card system for accounting for fixed assets and equipment. The index card system must contain the above information for each unit of property owned by the city.

(b) Such fixed asset and equipment records shall constitute a part of the general records of the municipality and, accordingly, shall be made available for utilization by the auditor at the time of audit.

**History.** Acts 1973, No. 159, § 7;  
A.S.A. 1947, § 19-5307.

**14-59-108. Reconciliation of bank accounts.**

(a) On a monthly basis, all municipalities receiving state aid shall reconcile their cash receipts and disbursements journals to the amount on deposit in banks.

(b) The reconciliations should take the following form:

City of .....

Date .....

Amount Per Bank Statement

Dated .....

\$ .00

Add: Deposits in Transit (Receipts recorded in Cash Receipts Journal not shown on this bank statement).

<u>DATE</u>	<u>RECEIPTS NO.</u>	<u>AMOUNT</u>	
		\$ .00	
		.00	
		.00	.00

Deduct: Outstanding Checks (Checks issued and dated prior to date of bank statement per Cash Disbursements Journal not having yet cleared the bank).

<u>CHECK NO.</u>	<u>PAYEE</u>	<u>AMOUNT</u>	
		\$ .00	
		.00	
		<u>.00</u>	<u>.00</u>
RECONCILED BALANCE			
			<u>\$ .00</u>

This reconciled balance shall agree to either the cash balance as shown on the municipality’s check stubs running bank balance or the municipality’s general ledger cash balance, whichever system the municipality employs.

**History.** Acts 1973, No. 159, § 12;  
A.S.A. 1947, § 19-5312.

**14-59-109. Prenumbered receipts.**

(a)(1) All items of income are to be formally receipted by the use of prenumbered receipts or mechanical receipting devices, such as cash registers, or validating equipment.

(2) In the use of prenumbered receipts, the following minimum standards shall be met:

(A) Receipts are to be prenumbered by the printer, and a printer’s certificate obtained and retained for audit purposes. The certificate shall state the date printing was done, the numerical sequence of receipts printed, and the name of the printer;

(B) The prenumbered receipts shall contain the following information for each item receipted:

- (i) Date;
- (ii) Amount of receipt;
- (iii) Name of person or company from whom money was received;
- (iv) Purpose of payment;
- (vi) Fund to which receipt is to be credited; and
- (vii) Signature of employee receiving money.

(C) The original receipt should be given to the party making payment. One (1) duplicate copy of the receipt shall be maintained in numerical order in the receipt book and made available to the auditors during the course of annual audit. Additional copies of the receipt are optional with the municipality and may be used for any purposes they deem fit.

(b) The use of mechanical receipting devices, which accomplish the same purpose as prenumbered receipts, is acceptable and is encouraged where such equipment is utilized.

**History.** Acts 1973, No. 159, § 4;  
A.S.A. 1947, § 19-5304.



**14-59-110. Cash receipts journals for cities.**

(a)(1) **GENERAL FUND.** Municipal corporations classified as either first or second class cities shall establish, as a minimum, a cash receipts journal consisting of columnar paper of at least ten (10) columns, which shall be in addition to columns required for dates, receipt numbers, and description.

(2)(A) The receipts journal shall indicate:

- (i) The date of the cash receipts;
- (ii) From whom the cash was received; and
- (iii) The total amount of the cash receipts.

(B) As a minimum, columns for the classification of such receipts shall include:

- (i) Total;
- (ii) State General Revenues;
- (iii) City General Taxes;
- (iv) Special City Tax Levies (2-3 columns);
- (v) Court Fines and Fees;
- (vi) Other; and
- (vii) Source of Other.

(b)(1) **STREET FUND.** The street fund cash receipts journal for first and second-class cities shall consist of, as a minimum, columnar paper of at least five (5) columns, in addition to columns for date, receipt numbers, and description of the nature of such receipts.

(2)(A) The journal shall be posted, identifying each receipt by:

- (i) Receipt number;
- (ii) Date;
- (iii) From whom received; and
- (iv) Total amount received.

(B) The total amount received shall then be classified according to nature of receipts in the remaining columns, which shall be titled as a minimum:

- (i) Total;
- (ii) Highway Revenues;
- (iii) County Road;
- (iv) Other; and
- (v) Source of Other.

(c)(1) All items of receipts shall be posted to and properly classified in the cash receipts journal.

(2) The journal shall be footed and crossfooted monthly and reconciled to total bank deposits as shown on the municipalities' bank statements.

**14-59-111. Cash disbursements journals for cities.**

(a)(1) **GENERAL FUND.** The cash disbursements journal for the general funds of first and second class cities shall, as a minimum, consist of columnar paper of at least seven (7) columns, such columns being in addition to columns necessary for recording the date, payee, check number, and amount of each check written.

(2) The additional seven (7) columns are to be used for the classification of general fund expenditures as follows:

(A) **ADMINISTRATIVE EXPENSE:**

- (i) Salaries;
- (ii) Social Security;
- (iii) Utilities;
- (iv) Supplies;
- (v) Fixed Assets;
- (vi) Other; and
- (vii) Define Other.

(B) In the event the municipality maintains a police, fire, parks, or other department, then the city should establish additional columns in its cash disbursements journal which would reflect the expenditures of these departments separately, given a column for each category as set out above.

(b)(1) **STREET FUND.** The cash disbursements journal for street funds of a city of the first or second class shall consist of columnar paper of at least six (6) columns, which shall be in addition to columns utilized for recording dates, check numbers, payees, and total amounts expended from the street fund bank account.

(2) The additional minimum six (6) columns shall be used for classification of expenses, a minimum breakout of which is as follows:

- (A) Salaries and Labor;
- (B) Social Security;
- (C) Street Material and Supplies;
- (D) Operation and Maintenance;
- (E) Other; and
- (F) Define Other.

(c) The cash disbursements journal shall be footed and crossfooted monthly and reconciled to total bank disbursements as indicated on the monthly bank statements.

**History.** Acts 1973, No. 159, § 11;  
A.S.A. 1947, § 19-5311.

**14-59-112. Cash receipts journals for towns.**

(a) Municipal corporations not deemed first or second class cities shall be permitted to establish minimum cash receipts journals as set forth in this section if such minimums adequately fulfill their needs.

(1)(A) **GENERAL FUND.** Minimum cash receipts journal for the general fund shall consist of columnar paper. The total amount of the cash

receipt is to be listed by the receipt number, identification of the person or firm the money is received from, and the date of the receipt.

(B) In addition, the journal shall contain a minimum of five (5) columns for the classification and recording of the receipts. Columnar headings shall be a minimum of:

- (i) Total Cash Receipts;
- (ii) State General Revenues;
- (iii) City General Taxes;
- (iv) Other Receipts; and
- (v) Source of Other Receipts.

(2)(A) STREET FUND. The minimum journal for street funds shall be as described in subdivision (a)(1) of this section for general funds.

(B) The columnar headings shall be:

- (i) Total Cash Receipts;
- (ii) State Highway Revenue;
- (iii) Road Tax;
- (iv) Other Revenues; and
- (v) Source of Other Revenues.

(b)(1) The cash receipts journals shall be footed and crossfooted at least monthly and reconciled to bank deposits.

(2) Bank deposits shall be made intact and agreed to amounts recorded in the journal.

**History.** Acts 1973, No. 159, § 8;  
A.S.A. 1947, § 19-5308.

### **14-59-113. Cash disbursements journals for towns.**

(a) Municipal corporations not deemed cities of the first or second class shall be permitted to establish minimum cash disbursements journals as set forth in this section if such minimums adequately fulfill their needs.

(1)(A) GENERAL FUND. The minimum cash disbursements journal shall consist of columnar paper of at least seven (7) columns for classification of disbursements and shall include, in addition to such classification, all checks issued, entered numerically in chronological order, and shall identify the payee.

(B) In the first column of the journal shall be entered the total amount for which the check was written; subsequent columns shall be utilized for the classification of expenditures and shall contain at least the following:

- (i) Total Disbursements;
- (ii) Salaries;
- (iii) Utilities;
- (iv) Supplies;
- (v) Fixed Assets;
- (vi) Other; and
- (vii) Source of Other.



Other columns may be added and used as deemed appropriate by city officials.

(2)(A) **STREET FUND.** The minimum journal for street funds shall consist of columnar paper of at least five (5) columns, in addition to columns for descriptions, date, and check numbers. The street fund cash disbursements journal shall indicate all checks written on the street fund bank account listed numerically, indicating payee and total amount for which the check was written.

(B) Additional columns shall be used for classification or expenditures as follows:

- (i) Total;
- (ii) Salaries;
- (iii) Supplies;
- (iv) Other; and
- (v) Description of Other.

(b) The cash disbursement journals shall be footed and crossfooted monthly and reconciled to total bank disbursements as indicated on the monthly bank statements.

**History.** Acts 1973, No. 159, § 9;  
A.S.A. 1947, § 19-5309.

#### **14-59-114. Maintenance and destruction of accounting records.**

(a) Accounting records can basically be divided into the following two (2) groups:

(1)(A) **SUPPORT DOCUMENTS.** Support documents consist primarily of the following items:

- (i) Cancelled checks;
- (ii) Invoices; and
- (iii) Bank statements.

(B) These records shall be maintained for a period of at least three (3) years and in no event shall be disposed of prior to being audited for the period in question.

(2)(A) **PERMANENT RECORDS.** Permanent records consist of:

- (i) Journals;
- (ii) Ledgers;
- (iii) Subsidiary ledgers;
- (iv) Minutes; and
- (v) Fixed assets and equipment detail records.

(B) These records shall be maintained for a period of not less than seven (7) years by the municipality, after which period the records may be destroyed after an audit has been made of the records.

(b) When documents are destroyed, the municipality shall document the destruction by the following procedure:

(1)(A) An affidavit is to be prepared stating which documents are being destroyed and to which period of time they apply, indicating the method of destruction;

(B) This affidavit is to be signed by the municipal employee performing the destruction and one (1) council member.

(2)(A) In addition, the approval of the council for destruction of documents shall be obtained, and an appropriate note of such approval indicated in the council minutes along with the destruction affidavit;

(B) This council approval shall be obtained prior to the destruction.

**History.** Acts 1973, No. 159, § 15;  
1979, No. 616, § 2; A.S.A. 1947, § 19-5315.

#### **14-59-115. Monthly treasurer's report.**

(a) Each municipal treasurer of this state shall submit, monthly, a copy of his bank reconciliations and a signed statement stating that, as a minimum, the records of accounts as prescribed by this chapter have been maintained carefully and have been diligently posted.

(b) These reports shall be submitted to the city council or board of directors.

**History.** Acts 1973, No. 159, § 13;  
A.S.A. 1947, § 19-5313.

#### **14-59-116. Semiannual publication of financial statement.**

(a)(1) The governing body of each municipality shall, semiannually, cause to be published one (1) time in one (1) legal newspaper of general circulation in the municipality a financial statement of the municipality, including the receipts and expenditures for that period and a statement of the indebtedness and financial condition of the municipality.

(2) This financial statement shall be at least as detailed as the minimum record of accounts as provided in this chapter.

(3) This financial statement, for the first six (6) months of the calendar year, shall be published by September 1. The financial statement for the last six (6) months of the calendar year shall be published by March 1 of the following year.

(b) In incorporated towns where no newspaper is published, written or printed notice posted in five (5) of the most public places in the municipality shall be deemed a sufficient publication of the financial statement provided for in this section.

**History.** Acts 1973, No. 159, §§ 18, 19,  
as added by 1977, No. 308, § 1; A.S.A.  
1947, §§ 19-5316, 19-5317.

CHAPTER 60  
WORKERS' COMPENSATION

SECTION.

- 14-60-101. Requirement generally.
- 14-60-102. Date of coverage.
- 14-60-103. Responsibility for providing coverage.
- 14-60-104. Coverage through private car-

SECTION.

- rier or self-funding.
- 14-60-105. Municipalities with a popula-  
tion over 70,000.
- 14-60-106. Municipalities with a popula-  
tion over 150,000.

**A.C.R.C. Notes.** References to “this chapter” in §§ 14-60-101 to 14-60-105 may not apply to § 14-60-106 which was enacted subsequently.

**Publisher’s Notes.** Acts 1985, No. 866, as amended, is also codified as § 14-26-101 et seq.

**Effective Dates.** Acts 1985 (1st Ex. Sess.), No. 34, § 2: June 26, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 866 of 1985 mandated that municipalities and counties provide Worker’s Compensation coverage for their employees, with such coverage to be provided through private carriers or through one or more self-funding groups on a statewide basis; that such Act is in need of clarification with respect to the self-funding groups established on a statewide basis to authorize the formation of one or more self-funding groups of municipalities, or counties, or for both municipalities and counties, so long as safeguards are provided whereby any municipality or county shall have a right to participate in such group, if application is made for coverage thereunder; and that the immediate passage of this Act is necessary to make said clarification and to assure competition in the providing of Worker’s Compensation coverage for employees of municipalities and counties in this State. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1985 (1st Ex. Sess.), No. 43, § 2: July 11, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 866 of 1985 mandated that municipalities and coun-

ties provide Worker’s Compensation coverage for their employees, with such coverage to be provided through private carriers or through one or more self-funding groups on a statewide basis; that such Act is in need of clarification with respect to the self-funding groups established on a statewide basis to authorize the formation of one or more self-funding groups of municipalities, or counties, or for both municipalities and counties, so long as safeguards are provided whereby any municipality or county shall have a right to participate in such group, if application is made for coverage thereunder; and that the immediate passage of this Act is necessary to make said clarification and to assure competition in the providing of Worker’s Compensation coverage for employees of municipalities and counties in this State. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers’ compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 975, § 20: Apr. 1, 1997.



Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

### RESEARCH REFERENCES

**ALR.** Law enforcement officers' recovery for injury sustained during exercise or physical recreation activities. 44 ALR 5th 569.

**UALR L.J.** Legislative Survey, Workers' Compensation, 8 UALR L.J. 617.

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#### 14-60-101. Requirement generally.

(a) All municipalities shall be required to provide workers' compensation coverage for their officials, employees, and volunteer fire fighters.

(b) Coverages shall be provided for losses incurred while performing work for the municipality.

(c) Individuals convicted of a criminal offense and committed to a municipal detention facility or state correctional facility who are required to perform work for the municipality shall not be considered employees of the municipality.

**History.** Acts 1985, No. 866, § 1; A.S.A. 1947, § 81-1364; Acts 1993, No. 901, § 3.

§ 1 is also codified as § 14-26-101.

**Publisher's Notes.** Acts 1985, No. 866,

**Amendments.** The 1993 amendment added (c).

#### 14-60-102. Date of coverage.

This chapter shall be effective July 1, 1985. Claims incurred prior to July 1, 1985, shall continue to be the responsibility of the state. Claims incurred on or after July 1, 1985, shall be the responsibility of the municipalities.

**History.** Acts 1985, No. 866, § 3; A.S.A. 1947, § 81-1366.

**Publisher's Notes.** Acts 1985, No. 866, § 3 is also codified as § 14-26-102.

**14-60-103. Responsibility for providing coverage.**

(a) Municipal governing bodies shall be responsible for providing the workers' compensation coverage required by this chapter.

(b) Each municipal governing body is authorized to require reimbursement of its general fund on a pro rata basis from the budgets of its various municipal departments and agencies for whom the workers' compensation coverage is provided.

(c) Failure of a municipality to provide the workers' compensation coverage as required in this chapter shall result in loss of the municipality's general revenues turn back from the State of Arkansas for the period for which workers' compensation coverage is not provided.

**History.** Acts 1985, No. 866, § 4; A.S.A. 1947, § 81-1367.

**Publisher's Notes.** Acts 1985, No. 866, § 4 is also codified as § 14-26-103.

**14-60-104. Coverage through private carrier or self-funding.**

(a) Municipalities may provide workers' compensation coverage either through private carriers or through one or more self-funding groups.

(b) Self-funding groups established for this purpose shall meet the following requirements:

(1) Any self-funding group established to provide such coverage for municipalities only shall offer coverage to any municipality in the state that applies for coverage;

(2) Any such group established to provide coverage for both municipalities and counties shall offer coverage to any municipality or county in the state desiring to participate therein;

(3) Any group established to provide workers' compensation coverage to municipalities or to counties and municipalities shall offer such coverage at rates as established and filed with the Workers' Compensation Commission by the organization establishing the self-funding group. Rates for municipalities participating in any such group shall be revised annually based on the cost experience of the particular municipality, or group of municipalities, or group of municipalities and counties; and

(4)(A) Any self-funding group of participating municipalities or counties which is governed by a board of trustees of elected municipal or county officials shall be subject to the regulations of the Workers' Compensation Commission applicable to self-insured groups or providers. However, cities and counties shall not be required to enter into an indemnity agreement binding them jointly and severally.

(i) Each board governing a self-funding group shall be permitted to declare dividends or give credits against renewal premiums based on annual loss experience.

(ii) All self-funded groups shall obtain excess reinsurance from an admitted or approved insurance company doing business in Arkansas.

(B) However, in lieu of the reinsurance requirements in subdivision (b)(4)(A) of this section, any self-funded group under this section with one million five hundred thousand dollars (\$1,500,000) or more in annually collected premiums may provide excess reserves of twenty percent (20%) of annual premiums by any one of the following ways:

- (i) Cash or certificates of deposit in Arkansas banks;
- (ii) Letters of credit from an Arkansas bank; or
- (iii) Purchase of reinsurance from the National League of Cities' Reinsurance Company.

**History.** Acts 1985, No. 866, § 2; 1985 (1st Ex. Sess.), No. 34, § 1; 1985 (1st Ex. Sess.), No. 43, § 1; A.S.A. 1947, § 81-1365; Acts 1987, No. 206, § 1.

**Publisher's Notes.** Acts 1985, No. 866, § 2, as amended, is also codified as § 14-26-104.

### 14-60-105. Municipalities with a population over 70,000.

Municipalities with populations over seventy thousand (70,000) citizens are specifically authorized to provide workers' compensation coverage for their officials and employees through either private carriers or by self-funding on either a statewide or an individual basis.

**History.** Acts 1986 (2nd Ex. Sess.), No. 22, § 1; A.S.A. 1947, § 81-1368.

### 14-60-106. Municipalities with a population over 150,000.

Municipalities with populations over one hundred fifty thousand (150,000) citizens or their sewer committees are specifically authorized to provide workers' compensation coverage for their officials and employees through either private carriers or by self-funding on either a statewide or individual basis.

**History.** Acts 1997, No. 975, § 14.

**A.C.R.C. Notes.** References to "this chapter" in §§ 14-60-101 to 14-60-105

may not apply to this section which was enacted subsequently.

## CHAPTER 61

### CITY MANAGER ENABLING ACT OF 1989

#### SECTION.

- 14-61-101. Title.
- 14-61-102. Applicability.
- 14-61-103. Construction.
- 14-61-104. Ratification of existing procedures.
- 14-61-105. Change in size of board of directors.
- 14-61-106. Voting order.
- 14-61-107. Methods of selecting directors.

#### SECTION.

- 14-61-108. Designation of positions.
- 14-61-109. Determination of ward positions.
- 14-61-110. Compensation of directors.
- 14-61-111. Selection of mayor.
- 14-61-112. Directors and mayor selected by plurality vote.
- 14-61-113. Petition process for special elections.



## SECTION.

- 14-61-114. Options may also be referred by vote, ordinance — Mayor's veto power.
- 14-61-115. Initial organization as a management form of government.
- 14-61-116. Reorganization election by city with management form of government.

## SECTION.

- 14-61-117. Implementation of change in form of government under this chapter.
- 14-61-118. Resignation of director to run for mayor.
- 14-61-119. Removal of director.
- 14-61-120. Limited voting — Cumulative voting.

**Cross References.** City manager form of municipal government, § 14-47-101 et seq.

**Effective Dates.** Acts 1991, No. 49, § 7: Feb. 7, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the recall of municipal officials is confusing and conflicting; that this Act clarifies the law; and that clarification should go into effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1294, § 11: Apr. 22, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities with the management form of government and at-large elections face legal challenges to the method of selection of directors because of potential violations of federal laws concerning the voting rights of particular segments of a community; that in order to avoid problems under the federal and state voting laws it is essential to provide cities with the management form of government greater flexibility to implement governing plans that best meet the needs of the

citizens; that providing such flexibility is essential to the public health, safety and welfare. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 750, § 6: Mar. 23, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas that federal courts may order the reorganization of the city governing body in city manager forms of government to provide for the election of all members of the board of directors by wards; that this can result in the loss of citizens being able to elect a mayor by popular vote in the city at-large; and that it is necessary to provide the citizens of cities under federal court orders the option to petition for special elections at anytime to reorganize their city governments. Therefore, in order to allow the municipal citizens of Arkansas the opportunity to reorganize their city government, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

### CASE NOTES

#### In General.

This chapter ratified the various city-manager forms of government then in operation and provides cities with a variety of alternatives for structuring or re-

structuring the city-manager form of government. *Williams v. City of Texarkana*, 861 F. Supp. 756 (W.D. Ark. 1992), supp. op., 861 F. Supp. 771 (W.D. Ark. 1993), aff'd, 32 F.3d 1265 (8th Cir. 1994).

**14-61-101. Title.**

This chapter shall be known as the "City Manager Enabling Act of 1989".

**History.** Acts 1989, No. 907, § 1.

**14-61-102. Applicability.**

This chapter shall apply to all cities of the first class that now have, or may hereafter adopt, the management form of government. For purposes of this chapter, the phrase "city affected by this chapter" shall mean a city of the first class that adopts or utilizes the management form of government.

**History.** Acts 1989, No. 907, § 2.

**14-61-103. Construction.**

This chapter shall be liberally construed to provide affected cities with the maximum amount of freedom to structure their own municipal government within the basic constraints of the management form of government. Nothing in this chapter, however, should be read to diminish the powers and authority of the city manager in the management form of government.

**History.** Acts 1989, No. 907, § 18.

**14-61-104. Ratification of existing procedures.**

A city affected by this chapter that is organized under the management form of government on July 3, 1989, shall continue to elect members of the board of directors, or mayor, or both, and to compensate them in the manner used at the time of the general election immediately preceding July 3, 1989, unless the city chooses, at a special election called for that purpose, to exercise one (1) of the options provided in this chapter.

**History.** Acts 1989, No. 907, § 3.

**14-61-105. Change in size of board of directors.**

A city affected by this chapter may choose, by ordinance, to increase or decrease the number of directors, provided that the board of directors, including the office of mayor, shall always be an uneven number and shall never have less than five (5) members.

**History.** Acts 1989, No. 907, § 4.

14-61-106. Voting order.

If the city provides for the direct election of the mayor from an at-large position and if permitted to vote, that position shall vote last in board proceedings.

**History.** Acts 1989, No. 907, § 6.

14-61-107. Methods of selecting directors.

A city affected by this chapter may choose one (1) of the options included within this chapter as the method by which to select a board of directors. These options are:

- (1) All members of the board of directors elected at large;
- (2) An odd number of directors, including the mayor, with any combination of directors being elected at large and from wards, whether the position designated as mayor is appointed or directly elected;
- (3) All members of the board of directors but one (1) elected from wards, with one (1) member elected at large who shall be the mayor; or
- (4) All members of the board of directors elected from wards.

**History.** Acts 1989, No. 907, § 5; 1989 (3rd Ex. Sess.), No. 58, § 1; 1993, No. 1294, § 1.

**Amendments.** The 1993 amendment rewrote (2); and added “or” at end of (3).

CASE NOTES

ANALYSIS

In general.  
Method held improper.

In General.

An election among the statutorily permitted options in this section may come about from petitions filed by electors under § 14-61-113 or by reference of an option selected by the board to the voters under § 14-61-114; whatever the option being used, however, the directors (and where appropriate the mayor) are all selected by a plurality under § 14-61-112. *Williams v. City of Texarkana*, 861 F. Supp. 756 (W.D. Ark. 1992), *supp. op.*, 861 F. Supp. 771 (W.D. Ark. 1993), *aff’d*, 32 F.3d 1265 (8th Cir. 1994).

Method Held Improper.

The present four-three structure for the

election of the city board of Texarkana deprives black citizens of the city of an equal opportunity to participate in the political process and to elect candidates of their choice. *Williams v. City of Texarkana*, 861 F. Supp. 756 (W.D. Ark. 1992), *supp. op.*, 861 F. Supp. 771 (W.D. Ark. 1993), *aff’d*, 32 F.3d 1265 (8th Cir. 1994).

Seven-zero plan held to be one which is permitted under subdivision (4) of this section, held to be the more prudent plan for the city, and held to accomplish the remediation of the federal Voting Rights Act violation as to all positions on the board of directors in Texarkana. *Williams v. City of Texarkana*, 861 F. Supp. 771 (W.D. Ark. 1993), *aff’d*, 32 F.3d 1265 (8th Cir. 1994).



**14-61-108. Designation of positions.**

If a city affected by this chapter chooses to select some of its members at-large, it shall provide for their election on the ballot as follows:

(1) If a city chooses to select all members of its board of directors at-large, or chooses to select all of its members by ward, each position shall be numbered sequentially and candidates shall file for a numbered position, e.g., Director Position 1, Director Position 2, etc.;

(2) If a city chooses to select some of its members of the board of directors by ward, each ward position shall be numbered sequentially beginning with the number one (1) and candidates shall file for the numbered position, e.g., in a city with four (4) ward positions Director Ward 1, Director Ward 2, etc.;

(3) If a city chooses to select some members of the board of directors at-large, each at-large position for director shall be numbered sequentially beginning with the first number after the last designated ward position, and candidates shall file for the numbered position, e.g., Director Position 5, Director Position 6, etc.;

(4) Notwithstanding the foregoing, if the city provides for the direct election of the mayor from an at-large position, candidates for the position of mayor shall file for the position entitled "Mayor".

**History.** Acts 1989, No. 907, § 6.

**14-61-109. Determination of ward positions.**

If a city affected by this chapter chooses to select some of its members by ward, the ward positions shall be determined as follows:

(1) The county board of election commissioners of the county shall divide the territory of the city into the number of wards having substantially equal population, according to the most recently published federal census of population in the city, equal to the number of members of the governing board to be elected from wards;

(2) The county board of election commissioners shall complete its apportionment of the respective districts from which members of the governing board of the cities shall be elected and shall file it with the county clerk of the county and with the city clerk of the applicable city;

(3) The districts or wards so established by the board, unless changed or modified by order of a court of competent jurisdiction, shall be the wards of the city from which each of the respective members of the governing body of the city are to be elected;

(4) Following each federal decennial census of population, and following any special federal census of population within a particular city, if there has been a substantial change in the population of the wards from the preceding federal census, the county board of election commissioners shall reapportion the wards in each city in the manner and procedure as provided in this subsection from which the members of the governing board are to be elected;

(5) Notwithstanding the provisions of any other act, candidates for ward positions shall be residents of the ward they wish to represent.

Unless the electors choose otherwise, only those qualified electors residing in a ward may vote on a candidate from that ward.

**History.** Acts 1989, No. 907, § 7.

#### CASE NOTES

**Cited:** *Moorman v. Priest*, 310 Ark. 525, 1992), supp. op., 861 F. Supp. 771 (W.D. 837 S.W.2d 886 (1992); *Williams v. City of Ark.* 1993), aff'd, 32 F.3d 1265 (8th Cir. Texarkana, 861 F. Supp. 756 (W.D. Ark. 1994).

#### 14-61-110. Compensation of directors.

Neither a director nor the mayor of the city shall receive any compensation for his services unless authorized by the voters of the city at a special or general election. Following such authorization, the board of directors, by ordinance, shall set such compensation pursuant to the provisions of Arkansas Constitution Amendment 56, as may be amended, provided that no ordinance setting compensation shall contain an emergency clause.

**History.** Acts 1989, No. 907, § 8.

#### 14-61-111. Selection of mayor.

(a) Unless a majority of the qualified electors of the city voting on the issue choose otherwise, the mayor will be selected by a majority vote of the board of directors from among its members.

(b)(1)(A) If a majority of the qualified electors of the city voting on the issue vote to do so, the mayor shall be directly elected by the qualified electors of the city.

(B) Any person so elected shall serve as mayor for a term of four (4) years.

(2)(A) At a special or general election on the question of whether to directly elect the mayor, a majority of the qualified electors voting on the issue may also vote to require that a successful candidate for mayor receive a minimum percentage, less than fifty percent (50%), of the total votes cast for the position of mayor in order to be elected mayor without a runoff.

(B) The minimum percentage necessary for election without a runoff shall be determined by the governing body and referred to the electors for their approval.

(3)(A) If it is required that a candidate receive a minimum percentage, less than fifty percent (50%), of the total votes cast for mayor in order to be elected mayor without a runoff, and if no candidate for the position of mayor receives at least the required percentage of the votes cast, then the two (2) candidates receiving the highest number of votes shall be the nominees for the position of mayor and shall be certified to a special runoff election which shall be held two (2) weeks from the day on which the general election is held.

(B) The special runoff election shall be conducted, and the election results shall be canvassed and certified in the manner prescribed by law for municipal runoff elections.

(c) The question of whether to directly elect the mayor may be voted on at a general or special election held:

(1) At the time the city seeks to organize or reorganize under this chapter; or

(2) As the result of a properly presented petition filed pursuant to § 14-61-113; or

(3) As the result of the referral of an ordinance by the board of directors calling for a reorganization under this chapter.

(d) If an election to provide for the direct election of the mayor is unsuccessful, the issue shall not be submitted again for at least two (2) years after the date of the unsuccessful election.

**History.** Acts 1989, No. 907, § 9; 1993, No. 1294, § 2.

**Amendments.** The 1993 amendment rewrote this section.

### **14-61-112. Directors and mayor selected by plurality vote.**

(a) Unless special provisions for the position of mayor are implemented pursuant to § 14-61-111, the candidate for any designated position on the board of directors of a city affected by this chapter, including the mayor, who in any special or general election shall receive votes greater in number than those cast in favor of any other candidate for the position, shall be deemed to be elected.

(b) If special provisions for the election of the mayor are implemented pursuant to § 14-61-111, then those special provisions will control the election of the mayor.

**History.** Acts 1989, No. 907, § 10; 1993, No. 1294, § 3.

**Amendments.** The 1993 amendment, in (a), added the exception at the begin-

ning, substituted "including the mayor" for "including, if applicable, the position of mayor," and substituted "special or general" for "general or special"; and added (b).

### **CASE NOTES**

#### **Applicability.**

An election among the statutorily permitted options in § 14-61-107 may come about from petitions filed by electors under § 14-61-113 or by reference of an option selected by the board to the voters under § 14-61-114; whatever the option

being used, however, the directors (and where appropriate the mayor) are all selected by a plurality under this section. *Williams v. City of Texarkana*, 861 F. Supp. 756 (W.D. Ark. 1992), *supp. op.*, 861 F. Supp. 771 (W.D. Ark. 1993), *aff'd*, 32 F.3d 1265 (8th Cir. 1994).

### **14-61-113. Petition process for special elections.**

Except for questions that may be referred to the voters by the board of directors, unless it is a city where a federal court has ordered the redistricting of wards under the federal Voting Rights Act, options provided by this chapter shall be voted on at special elections called as a result of a petition for the special election being filed with the city



clerk and provided to the mayor. The following procedure shall be utilized for both initial elections to organize under the management form of government, for reorganization elections by a city already operating under the management form of government, and for elections to reorganize the selection of directors in cities where a federal court has ordered the redistricting of wards under the federal Voting Rights Act:

(1) A petition that calls for an election on one (1) particular option for selecting members of the board of directors using the form of the question outlined in § 14-61-115(b) shall be filed with the city clerk and provided to the mayor. The city clerk shall note on the petitions the date and time that they were filed. If such a petition contains the signatures of electors equal in number to fifteen percent (15%) of the number of ballots cast for the mayor, or if the mayor is not directly elected, for the director position receiving the highest number of votes, in the last general election, then the mayor shall, by proclamation, submit the question to the electors at a special election, provided:

(A)(i) The city clerk shall verify the number of signatures on the petitions within ten (10) days of the date they are filed.

(ii) If there are insufficient signatures on the petitions, the petitioners shall not receive any extensions for the petition.

(iii) If, however, there are a sufficient number of signatures on the petitions, but the city clerk is unable to verify the required number of signatures as those of qualified electors, then the petitioners will be given ten (10) days to provide a sufficient number of verified signatures;

(B) The proclamation calling the special election shall be issued within three (3) working days of the date the city clerk verifies the number of signatures on the petitions;

(C) The special election shall be held not less than thirty (30) nor more than sixty (60) days after the proclamation calling the election, provided that if the county board of election commissioners certifies in writing that it cannot prepare the ballots because of other pending elections, then the election can be held not more than seventy-five (75) days after the proclamation.

(2) Except for the provisions of subdivision (1)(A) of this section, if petitions filed with the mayor that call for an election on one (1) of the options set forth in this chapter are found to be insufficient for any reason whatsoever, then new petitions will have to be circulated and filed before the question can be considered again.

(3) Notwithstanding subdivision (2) of this section, if two (2) or more groups file petitions seeking a special election on one (1) of the options set forth in this chapter, and the first filed petitions are declared to be insufficient, then the city clerk will determine the sufficiency of the petitions that were filed next in time. Otherwise, upon a declaration that a set of petitions is sufficient and the first in time, then all petitions filed after the first sufficient petitions and before the special election shall be deemed moot and may be destroyed.

(4) Once an election has been held pursuant to the provisions of any act that results in a change in the manner of selecting the governing body of a city with the manager form of government, or seeks to reorganize a manager-government city under any other form of government, then none of the options presented by this chapter, or any act concerning the organization of the government under any form of municipal government, may be submitted to the voters for a period of four (4) years from the date of the election.

(5) Except as provided in § 14-61-114(a), if an election held pursuant to the provisions of any act fails to result in a change in the manner of selecting the governing body of a city with the manager form of government, or fails to reorganize such a city under any other form of government, then no other petitions seeking to adopt any of the options presented by this chapter, or to reorganize the city under any form of municipal government, may be submitted to the voters for a period of two (2) years from the date of the election.

**History.** Acts 1989, No. 907, § 11; 1993, No. 1294, § 4; 1995, No. 750, § 1.

**A.C.R.C. Notes.** Acts 1989, No. 907, § 11, provided, in part: "any election held pursuant to the provisions of this section shall submit the question presented in substantially the form set forth in Section 10 of this Act." This language was in the act as adopted, but it refers to a section of the bill as originally introduced, which was amended out of the bill during passage, concerning the submission of the granting of veto power to the mayor.

**Amendments.** The 1993 amendment, in (1), added (1)(A)(i) and redesignated the remaining subdivisions accordingly, and

made minor stylistic changes; in (1)(c), made minor punctuation changes; and rewrote (4) and (5).

The 1995 amendment, in the introductory paragraph, inserted "unless it is a city where a federal court has ordered the redistricting of wards under the federal Voting Rights Act" and added "and for elections to reorganize the selection of directors in cities where a federal court has ordered the redistricting of wards under the federal Voting Rights Act."

**U.S. Code.** The Voting Rights Act of 1965, referred to in this section, is codified as 42 U.S.C. § 1971 et seq.

## CASE NOTES

### Construction.

An election among the statutorily permitted options in § 14-61-107 may come about from petitions filed by electors under this section, or by reference of an option selected by the board to the voters under § 14-61-114; whatever the option

being used, however, the directors (and where appropriate the mayor) are all selected by a plurality under § 14-61-112. *Williams v. City of Texarkana*, 861 F. Supp. 756 (W.D. Ark. 1992), *supp. op.*, 861 F. Supp. 771 (W.D. Ark. 1993), *aff'd*, 32 F.3d 1265 (8th Cir. 1994).

### 14-61-114. Options may also be referred by vote, ordinance — Mayor's veto power.

(a)(1) Notwithstanding any other provision, the board of directors in a city operating under the management form of government may, by a two-thirds ( $\frac{2}{3}$ ) vote of all the members, including the mayor, refer to a special or general election, for approval by a majority of the qualified electors voting on the issue, one (1) of the options set forth in

§ 14-61-107, provided no election on a board-referred option has been held within the previous two (2) years.

(2) Notwithstanding the other provisions of this subsection and §§ 14-43-201 and 14-61-117, in a city operating under the management form of government where a federal court has ordered the redistricting of wards under the federal Voting Rights Act, the voters of the city are authorized to petition for a special election to vote on the options set forth in § 14-61-107 for reorganizing the selection of directors, including the election of a mayor at large, at any time. The option shall be voted on at special elections called as a result of a petition for the special election being filed with the city clerk and provided to the mayor under § 14-61-113.

(b) The board of directors in a city with the management form of government where all directors are elected from wards and the directly elected mayor does not have the veto power may, by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue, grant the mayor the veto power, provided that no election on such an ordinance will occur sooner than two (2) years after the last special election on the issue of veto power for the mayor.

(c) The board of directors in a city with the management form of government where all directors are elected from wards and the directly elected mayor has the veto power may, by ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue, remove the mayor's veto power, provided that no election on such an ordinance will occur sooner than two (2) years after the last special election on the issue of veto power for the mayor.

(d)(1) The board of directors of any city operating under the management form of government may by ordinance refer to the electors the issue of electing the mayor from an at-large board position, or the issue of granting veto power to the mayor, or both.

(2)(A) In any instance where the mayor of a city operating under the management form of government has a veto power, the board of directors may override the veto by a two-thirds ( $\frac{2}{3}$ ) vote of the number of members of the board.

(B) Mayors who have the veto power shall be entitled only to vote in case of a tie vote.

**History.** Acts 1989, No. 907, § 12; 1993, No. 1060, § 1; 1993, No. 1294, § 5; 1995, No. 750, § 2.

**Amendments.** The 1993 amendment by No. 1294 rewrote (a).

The 1993 amendment by No. 1060 added (d).

The 1995 amendment added (a)(2).

**U.S. Code.** The Voting Rights Act of 1965, referred to in this section, is codified as 42 U.S.C. § 1971 et seq.

## CASE NOTES

### Construction.

An election among the statutorily permitted options in § 14-61-107 may come

about from petitions filed by electors under § 14-61-113 or by reference of an option selected by the board to the voters



under this section; whatever the option being used, however, the directors (and where appropriate the mayor) are all selected by a plurality under § 14-61-112.

Williams v. City of Texarkana, 861 F. Supp. 756 (W.D. Ark. 1992), supp. op., 861 F. Supp. 771 (W.D. Ark. 1993), aff'd, 32 F.3d 1265 (8th Cir. 1994).

**14-61-115. Initial organization as a management form of government.**

(a) A city affected by this chapter that has not yet held an election on petitions calling for an election to adopt the management form of government shall submit at a special election a ballot that addresses the following questions:

- (1) Whether to adopt the management form of government;
- (2) Which option to follow for the selection of members of the board of directors, the number of directors, and whether to directly elect the mayor.

(b) At the special election on the question of whether to adopt the management form of government, the ballot shall contain substantially the following question:

- FOR adoption of the management form of government as set forth below ..... ☐
- AGAINST adoption of the management form of government as set forth below ..... ☐

(c) In the area of the ballot immediately below the questions set forth in subsection (a) of this section one (1) of the following explanations will be provided:

- (1) For options where all directors are elected at large:

(A) A city manager government with a (number) member board of directors elected at large. The mayor shall be selected from among the directors; or

(B) A city manager government with a (number) member board of directors elected at large. The mayor shall be directly elected.
- (2) For options where a majority of directors are elected from wards and the remaining directors are elected at large:

(A) A city manager government with (majority plus one) members of the board of directors from wards and (remaining number) members of the board of directors at-large. The mayor shall be selected from among the directors.

(B) A city manager government with (majority plus one) members of the board of directors from wards and (remaining number) members of the board of directors at-large. The mayor shall be directly elected.
- (3) For options where all members of the board of directors are elected from wards, but the mayor is elected at large:

(A) A city manager government with a (number) member board of directors all elected from wards. The mayor shall be directly elected at large.

(B) If and only if a city affected by this chapter votes on an option under this subsection, then the following question shall also appear on the ballot:

FOR giving the mayor a veto power but no vote unless there is a tie ..... ☐  
AGAINST giving the mayor a veto power but no vote unless there is a tie ..... ☐

- (C) Notwithstanding any other provision of this chapter, if the vote pursuant to this subdivision to provide the mayor with a veto power is unsuccessful, the issue shall not be submitted again for a period of two (2) years after the date of the certification of the unsuccessful election.
- (d) If a majority of the votes cast are in favor of the proposition of adopting the management form of government, then the city shall organize under the management form of government in accordance with the options selected.

**History.** Acts 1989, No. 907, § 13.

**A.C.R.C. Notes.** Acts 1989, No. 907, § 13, provided, in part: “in a city where all directors are elected by ward but the Mayor is elected at-large, whether the Mayor should have a veto power as provided by Section 10 of this Act.” This

language was in the act as adopted, but it refers to a section of the bill as originally introduced, which was amended out of the bill during passage, concerning the submission of the granting of veto power to the mayor.

**14-61-116. Reorganization election by city with management form of government.**

A city affected by this chapter that is already organized under the management form of government shall hold a special election on petitions calling for a reorganization under this chapter in accordance with the provisions of § 14-61-114 provided that, no special election shall be held on the option already being utilized by the city.

**History.** Acts 1989, No. 907, § 14.

**14-61-117. Implementation of change in form of government under this chapter.**

The following procedure will be used to implement this chapter by cities that have changed the manner by which directors and the mayor are selected:

- (1) If an option is chosen in which the mayor is directly elected, the position of mayor shall be elected at the first general election after the organization or reorganization of the city under the management form of government. Because of this fact, at the first meeting of the board of directors after the special election results have been certified, the mayor shall prepare slips of paper for each member of the board of directors whose current terms expire soonest. One (1) of these slips of paper shall have the word “Mayor” imprinted on it and the rest of the slips shall be blank. Each member whose term will expire soonest after the reorganization will draw a slip of paper and the director drawing the slip of paper with the word “Mayor” imprinted on it will not draw again. The successor for this director will be the elected mayor.

(2) The mayor shall then prepare slips of paper for each member of the board of directors, except the one (1) that has drawn the mayor's slip, upon which will be imprinted the name of a director position, or ward position, as may be needed. These members of the board of directors shall draw one (1) slip of paper, and the words imprinted on the slip drawn by each member shall determine the position and method of selection for such member's successor.

(3) Upon the expiration of the current term of a member, his successor shall be elected in the manner designated under this section. For example, if a member draws "Director Ward 1", then that member's successor shall be selected from the area designated as Ward 1 by the county board of election commissioners.

(4)(A)(i) If an option is selected that decreases the existing size of the board of directors, including the position of mayor, then at the first meeting after the results of the election have been certified, the mayor shall prepare slips of paper for each member of the board of directors, upon which will be imprinted the designation of the director positions that will remain after the decrease, whether at-large or ward positions, or a directly elected mayor. The remaining slips of paper shall remain blank.

(ii) The members of the board of directors shall draw one (1) slip of paper, and the words imprinted on the slip drawn by each member shall determine the position for which that member's successor will be selected.

(iii) Directors drawing a blank slip of paper shall not be succeeded upon the expiration of their terms of office.

(B)(i) If an option is selected that increases the existing number of directors, including the position of mayor, and the next general municipal election is more than one (1) year away, then a special election to fill the new positions shall be held within a reasonable time. This special election shall be conducted in accordance with the provisions of §§ 14-47-106 and 14-47-110. Persons elected at this special election shall serve until the next general municipal election, at which time the positions shall again be on the ballot for a full four-year term.

(ii) If an option is selected that increases the existing number of directors, including the position of mayor, and the next general municipal election is less than one (1) year away, then the board of directors, by majority vote, may:

(a) Conduct a special election, in accordance with the provisions of §§ 14-47-106 and 14-47-110, but declare that the initial term of office for these positions shall be from the date the results of the special election are certified until the end of the term for directors elected at the next general municipal election, and that thereafter persons elected to fill the positions will serve a term of four (4) years; or

(b) Choose to leave the positions vacant until the next general municipal election; or

(c) Fill the vacancies in accordance with § 14-47-113, with the persons appointed to serve until the next general municipal election.



(C) If an option is approved pursuant to § 14-61-107(2) that results in a change in the number of directors selected from wards, the board of directors, by majority vote, may determine how to select the positions as follows:

(i) The board may designate any or all of the positions to be selected at any special election called to implement the change, and at the succeeding two (2) general municipal elections, in order to fully implement the option adopted;

(ii)(a) In order to fully implement that option selected, the board may draw lots to determine which positions will be elected at any special election called to implement the change, and at the succeeding two (2) general municipal elections, in order to fully implement the option adopted. Each slip will be imprinted with the name of a ward position, an at-large position, or the mayor, as necessary, and the successor of the board member drawing a particular slip of paper will be elected from the position. For purposes of illustration, the director from Ward 1 will be elected at the general municipal election when the position of the director drawing the slip marked "Ward 1" is up for election. If the option selected increases the size of the board of directors, and if the board has not otherwise determined the positions to be selected, then the mayor and one (1) board member whose term expires at the general municipal election before or after the mayor's term expires will draw an extra slip for each necessary position. For example, if two (2) new positions are authorized and the mayor's term expires at the next general municipal election, then the mayor would draw one (1) extra slip and a board member whose term expires two (2) years after the mayor's term would draw one (1) extra slip.

(b) Once the board has determined how successors, or new members, or both, are to be selected, it may unanimously vote to fill all positions on the board, including the position of mayor, at a special election, or no later than the next general municipal election. If a decision is made to so expedite the election of the board, the board may designate which positions will initially be filled for two-year terms, with successors to be elected for four-year terms thereafter, which positions will be elected for four-year terms, with successors to be elected for four-year terms thereafter.

**History.** Acts 1989, No. 907, § 15;  
1993, No. 1294, § 6.

**Amendments.** The 1993 amendment  
rewrote this section.

### **14-61-118. Resignation of director to run for mayor.**

(a)(1) If a city affected by this chapter adopts an option that provides for the direct election of the mayor from an at-large position, any sitting member of the board of directors at the time such option is chosen may run for mayor at the first election for mayor without having to resign his seat on the board of directors.

(2) After the first election, however, any sitting member of the board of directors that chooses to run for mayor must resign his position in

order to do so unless his term ends at the same time the new term for mayor begins.

(b)(1) If a sitting director resigns his position in accordance with this section, then the remaining members of the board of directors shall select a successor to fill the unexpired term of the director that resigned.

(2) Any successor to fill an unexpired term must possess the same qualifications as that required for the position to which he is appointed.

(3) A person appointed to fill the unexpired term of a director may be a candidate for reelection to that office.

**History.** Acts 1989, No. 907, § 16.

### **14-61-119. Removal of director.**

(a) The holder of office of city director or the mayor is subject to removal by the electors qualified to vote for a successor of the incumbent.

(b) The procedure to effect the removal of the incumbent of this elective office shall be as follows:

(1) A petition shall be filed with the city clerk. This petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least thirty-five percent (35%) of the number of ballots cast for all candidates for the position held by the incumbent sought to be removed at the preceding election for that position.

(2) The petition shall contain a statement of the grounds and reasons on account of which the removal is sought.

(3) The signatures to the petition need not all be appended to one (1) paper, but each signer shall add to his signature his place of residence, giving street and number, if any.

(4) One of the signers of each of the papers shall make an oath before an officer competent to administer oaths that the statements therein made are true as he believes and that each signature to the paper appended is a genuine signature of the person whose name it purports to be.

(c) Within ten (10) days of the date of filing the petition, the city clerk shall ascertain and determine whether or not the petition is signed by the requisite number of qualified electors. If necessary, the board of directors shall allow the city clerk extra help for that purpose.

(d) The city clerk shall attach to the petition his certificate showing the result of his examination.

(e) If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten (10) days.

(f) Within ten (10) days after an amendment, the clerk shall make like examination of the amended petition.

(1) If his certificate shall show the amended petition to be insufficient, it shall be returned to the person filing it, without prejudice, however, to the filing of a new petition to the same effect.

(2) If the petition shall be deemed sufficient, the clerk shall submit it to the board without delay.

(g) If the board shall find the petition thus submitted to it contains the requisite number of electors signed thereto and is otherwise found to be sufficient, it shall order and fix a date for holding an election. This date shall be not less than thirty (30) days nor more than forty (40) days from the date of the clerk's certificate to the board that a sufficient petition is filed.

(h) The board shall make, or cause to be made, publication of notice and all arrangements for holding the election.

(i) The election shall be conducted and returned, and the result thereof declared in all respects as are other such elections under the general election laws of the city.

(j) At the election, the proposition submitted to the electors shall be:  
FOR the removal of (name of officer) from the Office of  
(Director)(Mayor) ..... ☐  
AGAINST the removal of (name of officer) from the Office of  
(Director)(Mayor) ..... ☐

(k) If the majority of votes cast on the issue shall be in favor of the removal of the officer, the officer shall be deemed removed and his office vacated, and it shall be filled in the manner provided for filling vacancies.

(l) If the majority of the votes cast on that issue shall be against the removal of the officer, the officer shall continue to serve.

(m) No recall petition shall be filed against any officer until he shall have held his office for at least six (6) months, nor shall any officer be subject to more than one (1) recall proceeding between biennial elections.

**History.** Acts 1989, No. 907, § 17;  
1991, No. 49, § 2.

**14-61-120. Limited voting — Cumulative voting.**

(a) A majority of the qualified electors voting on the issue may vote to permit limited voting or cumulative voting for directors, other than the mayor, elected at large.

(b) Under a limited voting system, voters are restricted to casting only one (1) vote for any single candidate, but are not given as many votes as there are at-large seats to fill.

(c) Cumulative voting shall be construed as allowing every voter to cast as many votes as there are positions to be filled of the same category, without restricting the voter to casting only one (1) vote for any particular candidate. This system permits voters to aggregate or cumulate their votes. For example, in a three-seat, three-vote election, a voter may provide three (3) candidates with one (1) vote each, or the voter may cast two (2) votes for one (1) candidate and one (1) vote for a second candidate, or the voter may cast all three (3) votes for a single candidate.



**History.** Acts 1993, No. 1294, § 7.

## CHAPTERS 63-69

[Reserved]

### *SUBTITLE 4. PUBLIC FINANCE GENERALLY*

## CHAPTER 70

### GENERAL PROVISIONS

[Reserved]

## CHAPTER 71

### FISCAL YEARS

#### SECTION.

14-71-101. Counties.

14-71-102. Cities and towns.

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**Cross References.** School fiscal year, § 6-20-410.

**Effective Dates.** Acts 1925, No. 210, § 8: approved Mar. 23, 1925. Emergency clause provided: "It is hereby ascertained and declared that by reason of the heavy indebtedness hanging over many cities and towns they are unable to procure or maintain proper facilities for the extinction of fires, proper police protection, or proper safeguards for the public health and that by reason of the indebtedness hanging over many counties they are unable to maintain the public buildings, the

roads and bridges in a safe condition, are unable to maintain such deputy sheriffs and deputy constables as are necessary to preserve the public peace and to protect the citizens against criminals and are unable to maintain the institutions and enforce the regulations for the preservation of the public health, and for these reasons it is hereby declared that an emergency exists, and that this act is immediately necessary for the preservation of the public peace, health and safety and the same shall take effect and be in force upon its passage."

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#### **14-71-101. Counties.**

The fiscal year of the affairs of the counties of the State of Arkansas, covering each period of twelve (12) months, shall begin on January 1 of each year and shall end at the close of business on December 31 of the same year.

**History.** Acts 1939, No. 28, § 1; A.S.A. 1947, § 13-102.

CASE NOTES

Claims.

The county court’s allowance of a claim on December 31, 1932 must have been allocated to the fiscal year of 1931-1932 in determining whether the warrant issued

therefor was void as having been given for an amount in excess of the revenues for the fiscal year. *Mitchell v. Volkmer*, 190 Ark. 11, 76 S.W.2d 947 (1934) (decision under prior law).

14-71-102. Cities and towns.

The fiscal year of each city and town in this state shall begin with January 1 and end at 12:00 midnight on December 31 of each year.

**History.** Acts 1925, No. 210, § 7; Pope’s Dig., § 9536; A.S.A. 1947, § 13-103.

CHAPTER 72  
BONDS OF COUNTIES, CITIES, AND TOWNS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. REFUNDING BONDS OF COUNTIES GENERALLY.
- 3. COUNTY BONDS FOR COURTHOUSES AND JAILS.
- 4. PURCHASE OF COUNTY BONDS BY COUNTY TREASURER. [REPEALED.]
- 5. REFUNDING MUNICIPAL BONDS ISSUED UNDER ARKANSAS CONSTITUTION, AMENDMENT 13.
- 6. LOCAL GOVERNMENT REVENUE BOND ELECTIONS.
- 7. REFUND OF AMENDMENT 13 MUNICIPAL BOND PROCEEDS.

RESEARCH REFERENCES

**ALR.** Computation of net “loss” for which fidelity insurer is liable. 5 ALR 5th 132.  
**Am. Jur.** 56 Am. Jur. 2d, Mun. Corp., § 592 et seq.

**C.J.S.** 20 C.J.S., Counties, § 258 et seq.  
64 C.J.S., Mun. Corp., § 1902 et seq.  
87 C.J.S., Towns, §§ 1139-1540.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-72-101. Municipal water and sewer revenue bonds for repayment of water pollution control grants.
- 14-72-102. Transfer of unexpended bal-

SECTION.

- ance of bond redemption fund to county hospital building fund.
- 14-72-103. [Repealed.]

**Effective Dates.** Acts 1973, No. 514, § 3: Mar. 30, 1973. Emergency clause provided: “It is hereby found and declared that municipalities which have received

grants for water pollution control projects funded by bonds issued by the Department pursuant to Act No. 108 (which bonds are payable from the proceeds of a

Water Quality Control Charge levied against users of the utility system of the Municipality receiving the grant), may, by refunding the bonds issued to fund the grant, obtain the use of reserves required to be maintained in connection with the Department bonds and realize a savings in debt service requirements, and this Act

is necessary to authorize the issuance of refunding bonds by municipalities for the purpose of refunding bonds issued under Act No. 108. An emergency is, therefore, declared to exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall be effective from and after its passage and approval."

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### **14-72-101. Municipal water and sewer revenue bonds for repayment of water pollution control grants.**

(a) Any city of the first class, city of the second class, or incorporated town, hereinafter referred to as "municipality", which has received from the Department of Pollution Control and Ecology a water pollution control project grant funded from the proceeds of bonds of the department issued pursuant to §§ 8-5-301 — 8-5-318 may issue water revenue bonds under the provisions of §§ 14-234-201 — 14-234-218, sewer revenue bonds under the provisions of §§ 14-235-201 — 14-235-224, or combined water and sewer revenue bonds for the purpose of refunding the bonds of the department issued to fund the grant.

(b) The refunding bonds may be combined with other bonds issued by the municipality under the provisions of §§ 14-234-201 — 14-234-218 and 14-235-201 — 14-235-224 into a single issue.

(c) All bonds issued under this section shall in all respects be authorized, sold, issued, and secured in the manner provided for other bonds issued under §§ 14-234-201 — 14-234-218 and 14-235-201 — 14-235-224 pursuant to which the refunding bonds are being issued.

**History.** Acts 1973, No. 514, § 1; A.S.A. 1947, § 13-1238.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general

powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

### **14-72-102. Transfer of unexpended balance of bond redemption fund to county hospital building fund.**

In all cases where bonds have been issued in any county for the construction, reconstruction, or extension of any county hospital as authorized by Arkansas Constitution, Amendment 25 [repealed], and all bonds issued for those purposes by any county have been wholly retired, the county courts of those counties may by appropriate order



transfer any balances remaining unexpended to the credit of the bond redemption funds in those counties to the county hospital building funds. The moneys may then be used for all purposes for which the county hospital building fund could be used.

**History.** Acts 1969, No. 325, § 1; A.S.A. 1947, § 13-1237.

**A.C.R.C. Notes.** It is questionable whether Ark. Const. Amend. 25 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

14-72-103. [Repealed.]

**Publisher's Notes.** This section, concerning refunding bonds for industrial development issued under Ark. Const. Amend. 49, was repealed by Acts 1995,

No. 555, § 1. The section was derived from Acts 1965, No. 487, § 1; A.S.A. 1947, § 13-1236.

SUBCHAPTER 2 — REFUNDING BONDS OF COUNTIES GENERALLY

SECTION.

- 14-72-201. Authority to refund — Procedure.
- 14-72-202. Form of bonds — Rights and remedies.
- 14-72-203. Certificates of indebtedness for interest due on refunded bonds and expense

SECTION.

- of issuing refunding bonds.
- 14-72-204. Tax for original bonds continued for refunding bonds.
- 14-72-205. Refunding bonds under Arkansas Constitution, Amendment 17.

**Effective Dates.** Acts 1935, No. 102, § 3: retroactive to Oct. 1, 1934.

Acts 1937, No. 371, § 5: approved Mar. 30, 1937. Emergency clause provided: "It is ascertained and hereby declared that by reason of substantial decrease in assessed valuation of taxable property, many counties of the state are unable to pay their maturing bonds and interest, when due; that there is grave danger that suits will be brought in the Federal Courts to in-

crease the assessed valuation of the taxable property in such counties thereby causing much additional expense, adding to the burden of the taxpayers in such counties and impeding the orderly administration of county governments so that this act is necessary for the preservation of the public peace, health and safety. Therefore an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

CASE NOTES

**Cited:** Arkansas Rural Medical Practice Student Loan & Scholarship Bd. v.

Luter, 292 Ark. 259, 729 S.W.2d 402 (1987).

14-72-201. Authority to refund — Procedure.

(a) Any county of this state shall have the power and is authorized to refund its outstanding bonded indebtedness on terms the county court shall deem for the best interest of the county and to that end may issue negotiable bonds with interest coupons attached. Such refunding bonds

either shall mature serially, the first principal payment to be not more than five (5) years after date, over a period of not more than forty (40) years from date thereof or shall mature on or before some fixed date not more than forty (40) years from date thereof, in which event the bonds shall provide for tender or call, or both, to be paid out of any surplus in the bond fund account.

(b) The county judge of the county may exchange refunding bonds for outstanding bonds of the county.

(c) The refunding bonds shall not be issued in a greater amount than the face value of the outstanding bonds then being refunded, and in no event shall the refunding bond bear a greater rate of interest than that borne by the bond for which it is exchanged.

(d) The new bonds shall bear the original signature of the county judge, under the seal of the county.

(e) This subchapter is intended to authorize only the refunding of valid, outstanding county funding, courthouse, or jail bonds.

**History.** Acts 1935, No. 102, § 1; 1937, No. 371, § 1; Pope's Dig., § 11315; A.S.A. 1947, § 13-1220.

### CASE NOTES

#### ANALYSIS

Applicability.  
Notice.

#### Applicability.

Whenever taxes collected from the millage tax fixed by the quorum court are inadequate to meet the county's bonded maturing obligations, the refunding scheme provided by this section is avail-

able. *Ruddell v. Jones*, 191 Ark. 1063, 89 S.W.2d 600 (1936).

#### Notice.

Notice of an order of the county court refunding the county's bonds is not required by this section. *Talkington v. Turnbow*, 190 Ark. 1138, 83 S.W.2d 71 (1935).

**Cited:** *Turnbow v. Talkington*, 191 Ark. 492, 86 S.W.2d 940 (1935).

### 14-72-202. Form of bonds — Rights and remedies.

The refunding bonds:

- (1) Shall be negotiable instruments;
- (2) May have coupons evidencing interest, payable annually or semiannually; and
- (3) Shall have all the rights of security and remedies for collection that are provided for the original bonds issued by the county.

**History.** Acts 1935, No. 102, § 2; Pope's Dig., § 11319; A.S.A. 1947, § 13-1221.

**14-72-203. Certificates of indebtedness for interest due on refunded bonds and expense of issuing refunding bonds.**

(a) In order to facilitate the refunding of its bonds, any county issuing refunding bonds may issue certificates of indebtedness bearing interest not to exceed five percent (5%) per annum, payable to bearer and negotiable, to cover matured interest due on outstanding bonds at the time they are exchanged for refunding bonds and may issue certificates of indebtedness, not bearing interest, payable to bearer, and negotiable, to cover the expenses of issuing refunding bonds.

(b) Both classes of certificates shall be paid out of the bond fund account of the county from any surplus that remains in the bond fund account in any year after the payment of the full amount of bonds and interest due that year on the refunding issue.

(c) Both classes of certificates of indebtedness issued in connection with an issue of refunding bonds shall be registered by the county treasurer, except that the certificates for expenses shall bear the early registration numbers to be followed by the certificates for interest. The certificates for interest shall be paid in numerical order of registration out of the money available for their payment.

**History.** Acts 1937, No. 371, § 2;  
Pope's Dig., § 11316; A.S.A. 1947, § 13-1223.

**14-72-204. Tax for original bonds continued for refunding bonds.**

The tax for the payment of the outstanding bonds levied by the quorum court of the county issuing the refunding bonds shall continue for the payment of the refunding bonds and certificates of indebtedness. If the tax proves insufficient to meet the maturities of the refunding bonds with interest, it shall be the duty of the quorum court of the county to increase the levy of taxes, but not beyond three (3) mills upon the dollar of the assessed valuation existing at the time of the levy.

**History.** Acts 1937, No. 371, § 3;  
Pope's Dig., § 11317; A.S.A. 1947, § 13-1224.

**14-72-205. Refunding bonds under Arkansas Constitution, Amendment 17.**

(a) Any county that has issued funding bonds, under Arkansas Constitution, Amendment 10, to take up its outstanding indebtedness which included any balance then due on the cost of construction of a courthouse or jail, or both, shall have the right to issue bonds under the provisions of Arkansas Constitution, Amendment 17 [repealed], and laws in aid thereof, to refund the same proportionate part of its outstanding funding bonds that the included balance of the cost of



construction of a courthouse or jail, or both, was of the total indebtedness funded under Arkansas Constitution, Amendment 10.

(b) Before proceeding under this section to refund courthouse or jail indebtedness, the county court shall enter upon its records an order declaring what part of the funding bonds issued by the county under Arkansas Constitution, Amendment 10, represented indebtedness for the construction of a courthouse or a jail, or both, and what part represented general county indebtedness.

(c) This order shall be published one (1) time in some newspaper published in the county. If no suit is brought within thirty (30) days after the publication to review the correctness of the finding made in the order, the finding shall be conclusive of the proportionate part of the funding bond issue represented by indebtedness for the construction of a courthouse or a jail, or both, and shall not be open to further attack.

(d) In the event a county shall refund part of its outstanding funding bonds under the provisions of Arkansas Constitution, Amendment 17 [repealed], and the laws in aid thereof, the county court shall then have authority to refund the balance of the county's outstanding funding bonds under the provisions of this subchapter.

**History.** Acts 1937, No. 371, § 4; Pope's Dig., § 11318; A.S.A. 1947, § 13-1225.

**A.C.R.C. Notes.** It is questionable as to whether Ark. Const. Amend. 17 is re-

pealed in whole or if only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

### SUBCHAPTER 3 — COUNTY BONDS FOR COURTHOUSES AND JAILS

#### SECTION.

14-72-301. Authority to issue.

14-72-302. Interest, maturity, and sale.

14-72-303. Submission of question to electors — Special election.

14-72-304. Form of ballot — Returns — Appeal.

#### SECTION.

14-72-305. Levy of special funding bond tax.

14-72-306. Publication — Sale of bonds.

14-72-307. Quorum court to levy tax.

**Effective Dates.** Acts 1929, No. 294, § 8: Mar. 29, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the want of proper jails in which to confine criminals and proper court houses in which to try them, the public peace and safety are endangered; that many counties will immediately proceed to avail themselves of the benefit of Amendment No. 17 to our Constitution and issue bonds to build court houses and jails, and that it is necessary immediately to provide proper safeguards for the sale of such bonds; that many counties have built court houses and jails

and have issued therefor warrants now outstanding payable through a long period of years, and the funds necessary to pay such warrants will so deplete the revenues of the counties that they will not have funds enough to preserve the public peace, health and safety; and for these reasons it is hereby ascertained and declared that an emergency exists requiring that this act go into immediate effect. It is therefore provided that this act shall go into effect and be in force immediately after its passage." But see, *Hargrove v. Arnold*, 181 Ark. 537, 26 S.W.2d 581 (1930).

**14-72-301. Authority to issue.**

Any county which has built, constructed, or extended a county courthouse or jail, or both, which has not been completely paid for and for which county warrants are now outstanding, may issue bonds through its county court to raise money to pay the indebtedness when authorized by a vote of the majority of the qualified electors of the county, voting on the question in the manner hereinafter provided.

**History.** Acts 1929, No. 294, § 1; Pope's Dig., § 2467; A.S.A. 1947, § 13-1213.

**CASE NOTES****Elections.**

County court could not issue bonds to take up outstanding warrants issued for building a courthouse without submitting the matter to qualified electors of county

under former Ark. Const. Amend. 17. *Irwin v. Alexander*, 184 Ark. 572, 43 S.W.2d 85 (1931) (decision prior to Ark. Const. Amend. 62).

**14-72-302. Interest, maturity, and sale.**

(a) Bonds bearing interest at a rate not exceeding five percent (5%) per annum and maturing in not more than thirty-five (35) years may be issued by the county court in the name of the county when authorized by a vote of the qualified electors, and they may be exchanged for the warrants when the warrants are discounted at the rate of five percent (5%) per annum, from the date of the bonds to the date of the maturity of the warrants, or they may be issued only as the warrants mature.

(b) In the latter event, the bonds shall be dated in installments as the outstanding warrants mature and bear interest only from that date.

(c) The bonds may be sold at public auction or upon sealed bids after notice by publication once a week for at least three (3) insertions in some newspaper published and having a bona fide circulation in the county. The last insertion is to be not less than seven (7) days before the date of sale, or they may be exchanged at par for warrants maturing on their date.

(d) The county court may, in its discretion, advertise the sale in other newspapers or in financial journals.

(e) The validity of the bonds shall not be affected by the fact that any of the officers executing them may have died or gone out of office before their sale or delivery.

(f) The bonds shall be made serially through a term of years.

(g) They shall be executed by the county judge and attested by the county clerk and shall bear the seal of the county court.

(h) They may all be sold at once, or they may be sold in installments, from time to time, as the outstanding warrants mature.

(i) Bonds shall not be sold on a basis of less than par for five percent (5%) bonds.

**History.** Acts 1929, No. 294, § 2; Pope's Dig., § 2468; A.S.A. 1947, § 13-1214.

### **14-72-303. Submission of question to electors — Special election.**

(a) If the county court decides that it would be advantageous to issue bonds under the authority of Arkansas Constitution, Amendment 17 [repealed], this section, and §§ 14-72-301, 14-72-302, and 14-72-304 — 14-72-307, it shall order the submission of the question to the qualified electors of the county at the next general election.

(b) However, if no general election for county and state officers will, under the law, be held within one (1) year of the making of the order, then the county court may, by order entered of record, call a special election in the county. This election shall be held not less than thirty (30) days nor more than sixty (60) days thereafter, and the county court shall name the date therefor.

(c) The special election shall in all other respects be held provided by law for the conducting of general elections. It is made the duty of the sheriff of the county, by proclamation duly made and published for the time and in the manner provided by law, to give notice of the time and place of holding the election.

**History.** Acts 1929, No. 294, § 3; Pope's Dig., § 2469; A.S.A. 1947, § 13-1215.

**A.C.R.C. Notes.** It is questionable whether Ark. Const. Amend. 17 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

### **14-72-304. Form of ballot — Returns — Appeal.**

(a) In the order calling the election, the county court shall prescribe the form of the ballot, which shall show the amount of the proposed bond issue, its purpose, and the amount of tax necessary to be levied in order to pay the bonds with interest, which amount shall not exceed five (5) mills on the dollar.

(b) The election officers shall make their returns of the result of the election to the county court which shall then enter of record an order showing the number of votes cast in favor of the bond issue and the number cast against it, and the clerk of the court shall publish the order for one (1) insertion in some newspaper having a general circulation in the county.

(c) Any elector and any property owner of the county may appeal from the finding of the county court as to the result of the election within thirty (30) days thereafter. If no appeal is taken within that time, the finding shall be conclusive.

**History.** Acts 1929, No. 294, § 4; Pope's Dig., § 2470; A.S.A. 1947, § 13-1216.



## CASE NOTES

## ANALYSIS

Applicability.  
Finding of court.

**Applicability.**

The provisions of this section requiring that the amount of the proposed bond issue (for refunding) and the amount of the tax to be levied therefor be shown on the ballot were held not to apply to an election called under former Ark. Const. Amend. 17, to determine whether the proposed court house, jail, or hospital shall be built. *Rogers v. Parker*, 211 Ark. 957, 203 S.W.2d 401 (1947) (decision prior to Ark. Const. Amend. 62).

**Finding of Court.**

The finding of the county court under this section from which an appeal must be taken within 30 days does not amount to a judgment rendered in an election contest. *Jones v. Dixon*, 227 Ark. 955, 302 S.W.2d 529 (1957).

Where neither appellant nor appellee questions the correctness of the court's tabulation of election returns, but rather the law as applied to the tabulation, the 30-day limit for appeal provided in this section does not apply. *Vance v. Johnson*, 238 Ark. 1009, 386 S.W.2d 240 (1965).

**Cited:** *Hughes v. Jackson*, 213 Ark. 243, 210 S.W.2d 312 (1948).

**14-72-305. Levy of special funding bond tax.**

(a) If a majority voting in the election vote in favor of the issue of the bonds and the levy of the tax, then the quorum or levying court, at any regular, special, or adjourned term thereafter held, shall levy, in addition to all other taxes authorized by law to be levied against all taxable property in the county, a special funding bond tax of not exceeding five (5) mills on the dollar, of the assessed valuation of the property, for the payment of the bonds. This levy, when once made, shall continue and be in force from year to year and extended on the tax books and collected until sufficient funds are collected to pay off and discharge the bonds and interest thereon.

(b) The county court may call a special meeting of the quorum or levying court for the purpose of levying the tax.

(c) If the tax first levied proves insufficient to pay the bonds with interest, it shall be the duty of the quorum or levying court to make the additional levies at a rate not exceeding five (5) mills on the dollar till the bonds with interest are paid.

(d) The proceeds of the tax shall be used only for the payment of the bonds with the interest, and the tax shall be and is pledged as security for the payment of bonds and shall never be diverted to or expended for any other purpose, nor collected for any greater amount or length of time than is necessary to pay and retire the principal and interest of the bonds.

**History.** Acts 1929, No. 294, § 5; Pope's Dig., § 2471; A.S.A. 1947, § 13-1217.

demption fund after payment of bonds, § 14-21-107.

**Cross References.** Use of bond re-

**14-72-306. Publication — Sale of bonds.**

(a) Bonds that may be issued to pay for courthouses or jails, or both, which may be built or extended, shall be sold only at public auction or on sealed bids after notice given by order of the county court and published once a week for at least three (3) insertions in some newspaper published and having a bona fide circulation in the county, the last insertion to be not less than seven (7) days before the date of sale.

(b) The notice shall state the amount and maturities of the bonds and the purposes for which they are issued.

(c) The county court may reject any and all bids for any bonds within the scope of this subchapter, and may order a new publication and a new sale, to be conducted in like manner; but the sale must always be to the highest bidder.

(d) Bonds may be sold on condition that they are to be delivered and paid for in installments as the work progresses, but that condition must appear in the notice, which may provide for bids in the alternative for cash or for payment and delivery in installments.

(e) The county court may, if it deems it advisable, advertise the sale in financial journals or in other newspapers published within or without the state.

**History.** Acts 1929, No. 294, § 6; Pope's Dig., § 2472; A.S.A. 1947, § 13-1218.

**CASE NOTES****Manner of Sale.**

The bonds issued to pay for public buildings shall be sold only at public auction or on sealed bids after notice is given by the

court as provided by law. *Campster v. Sanderlin*, 212 Ark. 665, 208 S.W.2d 16 (1948).

**14-72-307. Quorum court to levy tax.**

Whenever, at an election called for the purpose of authorizing the construction, reconstruction, or extension of any county courthouse or county jail, a majority voting in the election vote for such building or buildings, as the case may be, and for the necessary tax, the county court may, by order entered of record, call a special meeting of the quorum or levying court for the purpose of levying the tax authorized at the election; and it shall be the duty of the levying court to meet at the time specified in the order of the county court and to levy the tax authorized by the vote of the electors as aforesaid.

**History.** Acts 1929, No. 294, § 7; Pope's Dig., § 2473; A.S.A. 1947, § 13-1219.

## SUBCHAPTER 4 — PURCHASE OF COUNTY BONDS BY COUNTY TREASURER

### SECTION.

14-72-401 — 14-72-405. [Repealed.]

### 14-72-401 — 14-72-405. [Repealed.]

**Publisher's Notes.** This subchapter, concerning the purchase of county bonds by the county treasurer, was repealed by Acts 1995, No. 232, § 11. The subchapter was derived from the following sources:

14-72-401. Acts 1875 (Adj. Sess.), No. 55, § 1, p. 96; C. & M. Dig., § 2012; Pope's Dig., § 2561; A.S.A. 1947, § 13-1226.

14-72-402. Acts 1875 (Adj. Sess.), No. 55, § 2, p. 96; C. & M. Dig., § 2013; Pope's Dig., § 2562; A.S.A. 1947, § 13-1227.

14-72-403. Acts 1875 (Adj. Sess.), No. 55, § 3, p. 96; C. & M. Dig., § 2014; Pope's Dig., § 2563; A.S.A. 1947, § 13-1228.

14-72-404. Acts 1875 (Adj. Sess.), No. 55, § 4, p. 96; C. & M. Dig., § 2015; Pope's Dig., § 2564; A.S.A. 1947, § 13-1229.

14-72-405. Acts 1875 (Adj. Sess.), No. 55, § 5, p. 96; C. & M. Dig., § 2016; Pope's Dig., § 2565; A.S.A. 1947, § 13-1230.

## SUBCHAPTER 5 — REFUNDING MUNICIPAL BONDS ISSUED UNDER ARKANSAS CONSTITUTION, AMENDMENT 13

### SECTION.

14-72-501. Application of subchapter — Successive refunding.

14-72-502. Authority to refund — Issuance.

### SECTION.

14-72-503. Methods of issuance.

14-72-504. Form of bonds.

14-72-505. [Transferred and repealed.]

**Effective Dates.** Acts 1945, No. 103, § 6: approved Feb. 27, 1945. Emergency clause provided: "It has been found and it is hereby determined by the General Assembly that many cities in the state are paying interest rates on their outstanding bonds issued under Amendment No. 13 to the Constitution higher than those at which they might be refunded; that unprecedentedly low interest rates now prevail which have created a market advantageous to the issuance of refunding bonds; that the duration of said low interest rates is uncertain for the reason that Congress may shortly enact a statute taxing the interest upon future issues of such bonds which would render the refunding of the outstanding bonds impracticable, if not impossible; that such cities should take advantage of the present favorable

market and their failure to do so would result in great financial detriment to taxpayers; that under said Act No. 13 of 1939, refunding bonds cannot be issued so long as the taxes collected from the millage tax levied for the payment of the bonds to be refunded shall be sufficient to pay such bonds as they mature; that in many cases the taxes collected from said millage tax are sufficient to pay such bonds as they mature, which fact prevents the issuance of refunding bonds under said Amendment No. 13; that for said reasons it is hereby declared necessary for the preservation of the public peace, health, and safety that this act shall become effective without delay. An emergency therefore exists and this act shall take effect and be in force from and after its passage."



**14-72-501. Application of subchapter — Successive refunding.**

(a) The power and authority granted by this subchapter may be exercised successively.

(b) Any bonds which have once been refunded under this subchapter may thereafter, from time to time, be refunded.

**History.** Acts 1945, No. 103, § 3;  
A.S.A. 1947, § 13-1233.

**14-72-502. Authority to refund — Issuance.**

Any city of the first or second class of this state shall have the power and is authorized to refund, in whole or in part, from time to time, its valid outstanding bonds issued under Arkansas Constitution, Amendment 13 [repealed]. To that end, the city may issue negotiable refunding bonds upon the terms and conditions hereinafter set out.

**History.** Acts 1945, No. 103, § 1; A.S.A. 1947, § 13-1231.

**A.C.R.C. Notes.** It is questionable whether Ark. Const. Amend. 13 is re-

pealed in whole or whether only those provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

**14-72-503. Methods of issuance.**

(a)(1) No refunding bonds shall be issued until the debt refunded is cancelled simultaneously with the delivery of the refunding bonds either:

(A) By the surrender and cancellation of the bonds to be refunded;  
or

(B) If the outstanding bonds are redeemable before maturity and have been duly called for payment, by the deposit of the money for their payment upon presentation according to the terms of the call in trust with an escrow agent duly designated by the city council, which escrow agent shall be a bank or trust company whose trust funds are secured in the manner provided by the national or state banking laws and regulations thereunder; or

(C) By a combination of methods (A) and (B).

(2) The refunding bonds shall not be in a greater principal amount than the principal amount of the bonds to be refunded and shall not bear a greater rate of interest than that borne by the bonds to be refunded, except that the owners of the outstanding bonds taking refunding bonds in exchange or the purchasers, as the case may be, may have the privilege of conversion to bonds bearing a lower rate of interest, provided that by the conversion the city will receive no less and pay no more in principal and interest combined substantially than it would receive and pay if the bonds were not converted.

(b)(1) The refunding bonds may be exchanged for outstanding bonds or they may be sold for cash and the proceeds used to pay the outstanding bonds, or part may be exchanged and part may be sold.

(2) No refunding bonds shall be sold except at public sale after twenty (20) days' advertisement in some newspaper of bona fide circulation in the city issuing them.

(3) The refunding bonds that are sold shall be duly executed and deposited with the designated escrow agent which shall have authority to deliver them to the purchaser upon payment to it of the purchase price on or before the redemption date of the bonds that have been called, provided that the city has deposited with the escrow agent a sum sufficient to pay the interest on the bonds called to the redemption date.

(4) The proceeds of the sale of the refunding bonds and the interest to be paid by the city shall be held by the escrow agent and applied solely to the payment of the principal of the bonds refunded at their call date and the accrued interest thereon to that date when they are presented for payment.

(c) When any refunding bonds are to be exchanged for outstanding bonds, they may be executed and delivered to the escrow agent which shall have authority, from time to time, as outstanding bonds are presented to it for exchange, to deliver refunding bonds in principal amount of the same proportion of the total principal amount of the refunding bonds that the principal amount of the outstanding bonds to be exchanged bears to the total principal amount of the outstanding bonds to be refunded.

**History.** Acts 1945, No. 103, § 2;  
A.S.A. 1947, § 13-1232.

#### **14-72-504. Form of bonds.**

(a) All such refunding bonds shall be negotiable instruments and may have coupons evidencing interest, payable annually or semi-annually, and shall have all the rights of security and remedies for collection that are provided for the bonds that are refunded.

(b) They shall bear the original signature of the mayor of the city and be sealed with the seal of the city. The interest coupons may be signed with the facsimile signature of the mayor.

(c) In case the mayor whose signature appears on the bonds or interest coupons shall cease to be the mayor before delivery of the refunding bonds, the signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

**History.** Acts 1945, No. 103, § 3;  
A.S.A. 1947, § 13-1233.

**14-72-505. [Transferred and repealed.]**

**A.C.R.C. Notes.** The provisions of § 14-58-102 and later repealed, by Acts former § 14-72-505 were renumbered as 1997, No. 214, § 1.

**SUBCHAPTER 6 — LOCAL GOVERNMENT REVENUE BOND ELECTIONS****SECTION.**

- 14-72-601. Title.
- 14-72-602. Legislative intent.
- 14-72-603. Definitions.
- 14-72-604. Construction.
- 14-72-605. Certain districts excluded.
- 14-72-606. Election procedures — Contest.

**SECTION.**

- 14-72-607. Venue.
- 14-72-608. Elections held prior to effective date.
- 14-72-609. Refunding bonds.

**Cross References.** Local capital improvement bonds, Ark. Const., Amend. No. 62.

**Effective Dates.** Acts 1986 (2nd Ex. Sess.), No. 2, § 13: May 8, 1986. Emergency clause provided: "It is hereby found and declared that the decision of the Arkansas Supreme Court in the case of *City of Hot Springs v. Creviston* (decided March 3, 1986, supplemental opinion on rehearing, April 15, 1986) requires that an election be held by a county or municipality for the lawful issuance of revenue bonds, that there now exist no specific provisions for municipalities and counties

to conduct elections for the issuance of revenue bonds, and that there is an immediate and pressing need for the municipalities and counties of the State to issue revenue bonds for the construction of needed waterworks, sewer systems, airports, facilities to secure and develop industry or agriculture, and other public purposes. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the protection of the public peace, health, and safety, shall take effect, and be in full force, immediately upon its passage and approval."

**14-72-601. Title.**

This subchapter shall be referred to and may be cited as the "Local Government Revenue Bond Election Act of 1986."

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 1; A.S.A. 1947, § 13-1287.

**14-72-602. Legislative intent.**

The Arkansas Supreme Court has determined in the case of *City of Hot Springs v. Creviston*, that the Constitution of the State of Arkansas requires that the issuance of revenue bonds by counties and municipalities, including their boards and agencies, must be approved by the electors of the county or municipality at an election called for that purpose. In its decision, the Arkansas Supreme Court stated that these elections might be conducted under the general election laws of the state until the General Assembly provided otherwise. This subchapter is adopted in order that the procedures for these elections be more clearly established. This subchapter is not intended otherwise to limit



in any manner the exercise of the powers of counties or municipalities with respect to elections under Arkansas Constitution, Amendment 62, for bonds to be paid from taxes or other permitted sources and is not intended to alter or amend the procedures established by § 14-164-301 et seq.

(b) It is the specific intent of this subchapter that the provisions of this subchapter are in implementation of or supplemental to other constitutional or statutory provisions now existing or hereafter adopted which may provide for the issuance of revenue bonds. Nothing contained in this subchapter shall be deemed to be a restriction or a limitation upon the issuance of revenue bonds, except as specifically provided in this subchapter with respect to the necessity of approval at an election.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, §§ 2, 10; A.S.A. 1947, §§ 13-1288, 13-1295.

v. Creviston is reported at 288 Ark. 286, 705 S.W.2d 415 (1986).

**Publisher's Notes.** City of Hot Springs

This section has no subsection (a) designation.

### 14-72-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Bonds" means any evidence of indebtedness of a county or municipality issued pursuant to laws in effect authorizing the issuance of bonds, notes, certificates, or other instruments or evidences of indebtedness;

(2) "Clerk" means the clerk or recorder of a municipality or county clerk of a county;

(3) "County" or "municipality" also mean any agency, board, commission, or instrumentality of a county or municipality;

(4) "Legislative body" means the quorum court of a county or the council, board of directors, or other elected governing body of a municipality;

(5) "Municipality" means any city or incorporated town;

(6) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of a legislative body;

(7) "Revenue bonds" means all bonds the repayment of which are secured by the pledge of rents, user fees, charges, or other revenues, other than assessments for local improvements and taxes, derived from the project or improvements financed in whole or in part by such revenue bonds, from the operations of any governmental unit, or from any other special fund or source.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 3; A.S.A. 1947, § 13-1289.

**14-72-604. Construction.**

This subchapter shall be construed liberally to effectuate the legislative intent and the purposes of this subchapter as complete and independent authority for the performance of each and every action and thing authorized in this subchapter, and all powers granted in this subchapter shall be broadly interpreted to effectuate this intent and these purposes and not as a limitation of powers.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 11; A.S.A. 1947, § 13-1296.

**14-72-605. Certain districts excluded.**

The provisions of this subchapter shall not apply to bonds, notes, certificates, or other evidence of indebtedness issued by a regional water distribution district organized under § 14-116-101 et seq., or to any drainage district, levee district, or other improvement or special assessment district organized with the consent of the owners of land affected thereby under the laws of the state heretofore or hereafter adopted, notwithstanding that the district may pledge revenues from its operations or other sources in addition to, or in lieu of, a pledge of assessed benefits or interest thereon to secure payment of the indebtedness.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 8; A.S.A. 1947, § 13-1294.

**14-72-606. Election procedures — Contest.**

(a)(1) Whenever a county or municipality shall determine the need to issue revenue bonds, the issuance of which under the Constitution of the State of Arkansas requires approval at an election, the legislative body thereof shall, by ordinance, submit the question of the issuance of the revenue bonds to the qualified electors of the county or municipality.

(2) The question of the issuance of revenue bonds may be submitted at a general election or at a special election called for that purpose, as provided in the ordinance, and held in the manner provided in this subchapter.

(3) When revenue bonds are to be issued for more than one (1) purpose, the principal amount of revenue bonds applicable to each purpose shall be stated on the ballot as a separate question, and no revenue bonds shall be issued for such a purpose unless a majority of the electors voting on the question shall have approved the issuance of revenue bonds for that purpose.

(4) Except as otherwise provided in this subchapter, the election shall be held and conducted in the same manner as a special or general election under the election laws of the state.

(b)(1) The ordinance shall set forth the form of ballot questions, which shall include a statement of the purposes for which the revenue

bonds are to be issued and the proposed sources of repayment of the revenue bonds.

(2)(A) Notice of the election shall be given by the clerk of the county or municipality by one (1) publication in a newspaper having general circulation within the county or municipality not less than ten (10) days prior to the election.

(B) No other publication or posting of a notice by any other public official shall be required.

(3) The election shall be held no earlier than thirty (30) days after the date of adoption of the ordinance in which the election is called by the legislative body.

(c)(1) The county judge or mayor of the county or municipality shall proclaim the results of the election by issuing a proclamation and publishing the proclamation one (1) time in a newspaper having general circulation within the county or municipality.

(2)(A) The results of the election as stated in the proclamation shall be conclusive unless suit is filed in the circuit court in the county in which the municipality is located within thirty (30) days after the date of the publication.

(B) No other action shall be maintained to challenge the validity of the revenue bonds and of the proceedings authorizing the issuance of the bonds unless suit is filed in the circuit court within thirty (30) days after the date of the adoption of an ordinance authorizing the sale of the revenue bonds.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 4; A.S.A. 1947, § 13-1290.

#### **14-72-607. Venue.**

For the purposes of this subchapter, when it is necessary to determine whether publication or other activity has taken place within a municipality lying in more than one (1) county, or where suit shall be filed contesting an election in the municipality, then the publication, activity, or suit shall take place in the county in which a majority of the persons living in the municipality reside.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 6; A.S.A. 1947, § 13-1292.

#### **14-72-608. Elections held prior to effective date.**

Any election called for the purpose of authorizing revenue bonds and any ordinances or resolutions of a legislative body, or orders of a county court adopted in connection therewith prior to May 8, 1986, shall be deemed ratified and in full compliance with this subchapter if the ordinance, order, or resolution calling the election or notice of election was published at least one (1) time in a newspaper of general circulation in the municipality or county and all other procedures followed complied substantially with the provisions of this subchapter.



**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 7; A.S.A. 1947, § 13-1293.

### 14-72-609. Refunding bonds.

(a) Revenue bonds issued for the purpose of refunding revenue bonds issued prior to March 3, 1986, may be issued without the necessity of an election under this subchapter if the source of repayment is substantially the same as that provided at the original issuance of the revenue bonds to be refunded.

(b) Revenue bonds to refund revenue bonds authorized at an election pursuant to this subchapter may be refunded without the necessity of an election. However, if the refunding revenue bonds shall be in a greater principal amount than the revenue bonds being refunded or shall be payable from a different source of revenues, the question of issuing the refunding revenue bonds shall be submitted at an election called in the manner provided in this subchapter.

(c) These refunding revenue bonds may be either sold for cash or delivered in exchange for the outstanding obligations. If sold for cash, the proceeds may either be applied to the payment of the revenue bonds being refunded or deposited in an irrevocable trust for the retirement of the revenue bonds at maturity or on an authorized redemption date.

**History.** Acts 1986 (2nd Ex. Sess.), No. 2, § 5; A.S.A. 1947, § 13-1291.

## SUBCHAPTER 7 — REFUND OF AMENDMENT 13 MUNICIPAL BOND PROCEEDS

### SECTION.

14-72-701. Disposition of principal and interest.

### SECTION.

14-72-702. Filing of claims.

14-72-703. Publication of notice.

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**Effective Dates.** Acts 1989, No. 490, § 6: Mar. 10, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary and desirable to provide for the disposition of interest and principal of certain Amendment 13 bonds, the proceeds of which were never expended; that such provisions are immediately necessary to resolve present uncertainty in the law in order that needless litigation may be

avoided or concluded; and that such provisions are immediately necessary in order for certain of our cities to plan budgets and expenditures and thereby serve the interest of their citizens. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health and safety, shall be in full force from and after its passage and approval."

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### 14-72-701. Disposition of principal and interest.

In instances where bonds were issued by a municipality under Arkansas Constitution, Amendment 13 [repealed], and the project for which the bonds were issued has not been commenced within ten (10) years after the bonds were issued, all interest accrued and accruing on

the bond principal may be transferred into the general fund of the city upon a two-thirds ( $\frac{2}{3}$ ) vote of its governing body. The principal balance shall be refundable to the taxpayers under the procedure prescribed by this subchapter.

**History.** Acts 1989, No. 490, § 1. provisions that conflict with Ark. Const. Amend. 62 are repealed by Ark. Const. Amend. 62.

**A.C.R.C. Notes.** It is questionable whether Ark. Const. Amend. 13 is repealed in whole or whether only those

CASE NOTES

**Cited:** Hartwick v. Thorne, 300 Ark. 502, 780 S.W.2d 531 (1989).

14-72-702. Filing of claims.

- (a) The taxpayer must file a claim with the city clerk stating:
  - (1) The name and mailing address of the taxpayer;
  - (2) The time when and the period for which the tax was paid;
  - (3) The amount of the tax which the taxpayer claims was levied for retirement of the bond issue;
  - (4) Any other necessary information required by the city clerk.
- (b) The city clerk shall be available for assistance in providing the above necessary information.

**History.** Acts 1989, No. 490, § 2.

14-72-703. Publication of notice.

- (a) Before any money is transferred into the city general fund under this subchapter, the city shall publish a notice of the refund procedure at least once per week for at least four (4) consecutive weeks in a newspaper having general circulation within the city.
- (b) All principal not claimed within six (6) months after the fourth publication of the notice shall be transferred into the general fund of the city.

**History.** Acts 1989, No. 490, § 3.

CHAPTER 73

LOCAL GOVERNMENT RESERVE FUNDS

SECTION.	SECTION.
14-73-101. Definitions.	14-73-103. Trust agreement.
14-73-102. Authority to establish reserve for improvements.	14-73-104. Payment of funds into reserve.

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**Effective Dates.** Acts 1983, No. 542, § 7: approved Mar. 19, 1983. Emergency clause provided: "It is hereby found and declared that various communities and

local governments as described in this Act, are in need of improvements of the kind authorized by this Act to provide for the public health and safety and there is no authorization to provide a means for saving funds for these improvements in the future, leaving such local governments only with the alternatives of borrowing or

paying for such improvements out of current revenues. Therefore, it is hereby declared that an emergency exists and that this Act is necessary for the immediate preservation of the public peace, health, and safety and that this Act shall take effect and be in force from and after its passage."

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### **14-73-101. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Local government" means any:

- (A) City of the first or second class;
- (B) Incorporated town;
- (C) County;
- (D) School district;
- (E) Improvement district; or

(F) Board, agency, or commission of the governments set out in subdivisions (1)(A)-(E) of this section including, but not limited to:

- (i) Waterworks commission;
- (ii) Sewer committee;
- (iii) Airport commission;
- (iv) Parking authority;
- (v) Public transit authority;
- (vi) Library commission;
- (vii) Advertising and promotion commission; or
- (viii) Port authority.

(2) "Improvement" means:

(A) Public works or projects authorized by law which are undertaken by a local government for public use or benefit including, but not limited to, streets and transportation facilities, waterworks facilities, sewer facilities, airports, parking facilities, drainage facilities, buildings, sidewalks, convention centers, schools, city halls, jails, fire stations, solid waste disposal facilities, courthouses, recreational facilities, stadiums, libraries, and hospitals; and

(B) Engineering and architectural fees and other development and acquisition costs of those public works or projects.

(3) "Governing body" means:

- (A) The legislative body of any:
  - (i) City, town, or county;
  - (ii) Improvement district; or
  - (iii) School board; and

(B) The body or board authorized to operate a board, agency, or commission including, but not limited to, the board of commissioners of a waterworks commission, members of a sewer committee, the board of commissioners of an airport commission, members of a parking authority, the board of commissioners or directors of an



improvement district, the board of directors of a public transit authority, members of an advertising and promotion commission, commissioners of a housing authority, board of trustees of a library, or members of a port authority.

**History.** Acts 1983, No. 542, § 1;  
A.S.A. 1947, § 13-2701.

#### **14-73-102. Authority to establish reserve for improvements.**

(a) Any local government desiring to own, acquire, construct, reconstruct, remodel, equip, extend, operate, maintain, or otherwise provide improvements may establish a reserve for those improvements so that the costs thereof may be accumulated out of revenues from year to year.

(b) The reserve shall be authorized by resolution of the governing body, provided that a reserve for a local government board, agency, or commission shall also be approved by resolution of the governing body creating the board, agency, or commission.

**History.** Acts 1983, No. 542, § 2;  
A.S.A. 1947, § 13-2702.

#### **14-73-103. Trust agreement.**

(a) The reserve fund shall be established by written agreement with a trustee independent from the local government. The trust agreement shall contain:

(1) A description of the improvements for which the reserve is established;

(2) A covenant that the reserve funds will not be used for any purpose other than the purposes described in the trust agreement;

(3) A covenant by the trustee that all sums in the reserve fund will be invested by the trustee in a manner consistent with the "prudent man" rule, as authorized and defined by §§ 28-71-105 and 28-71-106;

(4) A covenant by the trustee to disburse the reserve funds only to the contractor or to a trustee for bonds or notes issued to finance the improvements or to disburse the reserve funds in such manner that they will be applied to the acquisition, construction, reconstruction, remodeling, equipping, extending, operating, maintaining, or providing the improvements;

(5) A term for the agreement which shall not exceed twenty-one (21) years.

(b) A trust agreement in which a city, town, or county is a party shall specify that each payment to the reserve fund shall be a separate contract with the trustee and shall specifically limit the amount of payments to the reserve fund in any fiscal year to the amount of the appropriation to the reserve fund for that fiscal year.

(c) The trust agreement may contain provisions providing for the trustee's fee, if any, to be paid from the reserve funds held in trust.

**History.** Acts 1983, No. 542, § 3;  
A.S.A. 1947, § 13-2703.

### 14-73-104. Payment of funds into reserve.

After the execution of the trust agreement, the local government may, during the fiscal year in which the agreement is executed and in subsequent fiscal years, appropriate, pay, or disburse the funds into the reserve as the governing body may determine during those fiscal years.

**History.** Acts 1983, No. 542, § 4;  
A.S.A. 1947, § 13-2704.

## CHAPTER 74

### TAXING AGENCIES — BORROWING AND BANKRUPTCY

#### SECTION.

- 14-74-101. Chapter cumulative.
- 14-74-102. Enumeration of taxing agencies and instrumentalities.
- 14-74-103. Authority to use federal finance laws — Bankruptcy.

#### SECTION.

- 14-74-104. Authority to refinance, re-fund, etc.
- 14-74-105. Participation by state departments.

**Preambles.** Acts 1939, No. 69 contained a preamble which read: "Whereas, the Congress of the United States has passed laws providing that taxing agencies, including municipal corporations and improvement districts may borrow from Reconstruction Finance Corporation and other Federal agencies and may make compositions of their debts with creditors and refinance and refund their debts and obligations by voluntary proceedings in Federal Courts of Bankruptcy; and

"Whereas, it is expedient and advisable that the State cooperate by enabling all such districts to avail themselves of the benefits of said laws passed by Congress;

"Therefore...."

**Effective Dates.** Acts 1939, No. 69, § 3: Feb. 10, 1939. Emergency clause provided: "It is hereby ascertained and declared to be a fact that owing to depression in the value of farm and timber products and of real estate, and to the general financial depression that has prevailed for a number of years, many of such taxing agencies have been unable to pay their bonds and other obligations as they ma-

ture and many of such districts have become insolvent; that the State is unable to grant relief to the taxpayers of such districts because States are forbidden by the Constitution of the United States to impair the obligation of contracts; that Congress under the provisions of the Constitution may impair such obligations and adjust and modify liens without violating any constitutional provision; and that Congress has provided such laws, but some question has been raised as to whether certain types of taxing agencies can avail themselves of the benefits of such bankruptcy statutes without the permission of the State, and that the result has been to leave many districts faced with indebtedness they cannot pay and the situation is causing hardship to taxpayers as well as to creditors. Now, Therefore, an emergency is found to exist and this act being necessary for the immediate preservation of the public peace, health and safety, it shall be in force and take effect from and after its passage and approval."

**RESEARCH REFERENCES**

**ALR.** Validity of state or municipal tax or license fee upon occupation of practicing law. 50 ALR 4th 467.

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**14-74-101. Chapter cumulative.**

The provisions of this chapter shall be cumulative to any similar provisions of law now in effect.

**History.** Acts 1939, No. 69, § 2; A.S.A. 1947, § 13-1302.

**14-74-102. Enumeration of taxing agencies and instrumentalities.**

The taxing agencies and instrumentalities to which this chapter is applicable shall be all those recited in those acts of Congress and that may be recited in any amendment thereof, including the following:

All the taxing agencies or instrumentalities hereinafter named, payable:

(A) Out of assessments or taxes, or both, levied against and constituting liens upon property in any of the taxing agencies or instrumentalities; or

(B) Out of property acquired by foreclosure of the assessments or taxes or both; or

(C) Out of income derived by the taxing agencies or instrumentalities from the sale of water or power or both, or any combination thereof; or

(D) From any combination of:

(i) Drainage, drainage and levee, levee, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or

(ii) Local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or

(iii) Local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or

(iv) Public school districts or public school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public school facilities; or

(v) Local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or

(vi) Any city, town, village, borough, township, or other municipality.



**History.** Acts 1939, No. 69, § 1; A.S.A. 1947, § 13-1301.

### **14-74-103. Authority to use federal finance laws — Bankruptcy.**

(a) Any and all the taxing agencies or instrumentalities named in § 14-74-102 shall have the right and power to:

(1) Avail themselves of any and all acts of the Congress of the United States providing for the lending of money to such districts and for the refinancing, refunding, adjustment, or composition of indebtedness of taxing agencies and any amendments or additional laws Congress may adopt in that behalf; and

(2) Proceed in the district courts of the United States in bankruptcy or in any other federal courts given like jurisdiction by voluntary proceedings in accordance with those acts of Congress and any amendments thereto.

(b) This chapter expresses the consent of the state for the institution of bankruptcy proceedings by any and all such taxing agencies acting through their governing boards.

**History.** Acts 1939, No. 69, § 1; A.S.A. 1947, § 13-1301.

### **14-74-104. Authority to refinance, refund, etc.**

Any and all of the taxing agencies and instrumentalities set out in § 14-74-102 acting through their governing boards shall have the right to cooperate with and to borrow from the Reconstruction Finance Corporation and with any and all other governmental agencies, and with creditors, banks, trust companies, and other private or public lending agencies in refinancing and refunding and effecting compositions or the debts of the taxing agencies and instrumentalities and to issue refunding bonds, certificates of indebtedness, notes, and other securities to refinance debts and to pledge the assessments, revenues, and income of the taxing agencies or instrumentalities for the repayment of the refunding bonds, notes, certificates, and securities and to take any and all steps reasonably necessary to complete the refinancing or refunding programs and debt compositions.

**History.** Acts 1939, No. 69, § 2; A.S.A. 1947, § 13-1302.

### **14-74-105. Participation by state departments.**

Any department of this state authorized by any law of this state to purchase, own, or hold as security any bonds issued by any agencies or districts enumerated in the previous provisions of this chapter is authorized and empowered to give its consent to and participate in any plan, composition, or arrangement for the readjustment or refunding of the bonded indebtedness of any of the districts or agencies set out in § 14-74-102.

**History.** Acts 1939, No. 69, § 2; A.S.A. 1947, § 13-1302.

## CHAPTER 75

### MANAGEMENT LETTER FOR AUDIT

SECTION.

14-75-101. Definition.

14-75-102. Letter required.

14-75-103. Contents of letter.

SECTION.

14-75-104. Furnishing copy to Legislative  
Joint Auditing Committee.

#### 14-75-101. Definition.

For the purpose of this chapter, a “political subdivision” shall not include levy districts, drainage districts, or any other improvement districts.

**History.** Acts 1973, No. 392, § 2;  
A.S.A. 1947, § 13-2002.

#### 14-75-102. Letter required.

Any political subdivision of the State of Arkansas engaging the services of a certified public accountant for the purpose of statutorily required audits shall require the certified public accountant to issue, in addition to the audit report, what is commonly referred to in the accounting profession as a management letter.

**History.** Acts 1973, No. 392, § 1;  
A.S.A. 1947, § 13-2001.

#### 14-75-103. Contents of letter.

The management letter shall include:

- (1) Comments by the certified public accountant as to his observations on the system of internal control employed by the political subdivision;
- (2) Exceptions to statutory provisions;
- (3) Requirements which may have been noted by the certified public accountant; and
- (4) Any recommendations or suggestions the certified public accountant may desire to make to the subdivision under audit.

**History.** Acts 1973, No. 392, § 1;  
A.S.A. 1947, § 13-2001.

### **14-75-104. Furnishing copy to Legislative Joint Auditing Committee.**

(a) The political subdivision shall supply the Legislative Joint Auditing Committee with one (1) copy of the management letter in addition to the required copy of the audit report.

(b) The management letter shall be forwarded to the committee with the audit report.

**History.** Acts 1973, No. 392, § 3;  
A.S.A. 1947, § 13-2003.

## **CHAPTER 76**

### **LOCAL GOVERNMENT LEASE AGREEMENTS AND PURCHASE CONTRACTS**

#### **SECTION.**

14-76-101 — 14-76-108. [Repealed.]

#### **14-76-101 — 14-76-108. [Repealed.]**

**Publisher's Notes.** This chapter, concerning local government lease agreements and purchase contracts, was repealed by Acts 1995, No. 555, § 1. The chapter was derived from the following sources:

14-76-101. Acts 1991, No. 508, § 1.

14-76-102. Acts 1991, No. 508, § 2.

14-76-103. Acts 1991, No. 508, § 11.

14-76-104. Acts 1991, No. 508, § 3.

14-76-105. Acts 1991, No. 508, §§ 4-6.

14-76-106. Acts 1991, No. 508, § 6.

14-76-107. Acts 1991, No. 508, § 7.

14-76-108. Acts 1991, No. 508, § 8.

## **CHAPTER 77**

### **LOCAL FISCAL MANAGEMENT RESPONSIBILITY ACT**

#### **SECTION.**

14-77-101. Title.

14-77-102. Definitions.

14-77-103. Compliance with fiscal responsibility and management laws — Investigation.

14-77-104. Notification of violation.

14-77-105. Remedial or corrective action.

14-77-106. Investigation by prosecuting attorney.

#### **SECTION.**

14-77-107. Civil suit by prosecuting attorney.

14-77-108. Civil penalty.

14-77-109. Recovery of costs.

14-77-110. Civil procedures apply.

14-77-111. Existing remedies not impaired.

#### **14-77-101. Title.**

This chapter may be known and cited as the “Local Fiscal Management Responsibility Act”.

**History.** Acts 1991, No. 724, § 1.



**14-77-102. Definitions.**

As used in this chapter, unless the chapter otherwise provides:

(1) "Executive officer" means the following for the applicable political subdivisions:

(A) For school districts, an "executive officer" is the superintendent of the school or the director of the educational cooperative;

(B) For municipalities, an "executive officer" is the mayor, city manager, or city administrator;

(C) For counties, an "executive officer" is the elected official exercising administrative control over a particular county employee;

(2) "Knowingly" means that a person is aware or should have been aware that his conduct will violate the fiscal responsibility and management laws;

(3) "Political subdivision" means any county, municipality, or school district of the State of Arkansas;

(4) "Public officer or employee" means any officer or employee of a county, municipality, or school district located in the State of Arkansas;

(5) "Fiscal responsibility and management laws" means the following laws, as amended, and as applicable to the following subdivisions:

(A) Counties:

(i) County government, Arkansas Constitution, Amendment 55;

(ii) County Record Retention, § 13-10-101 et seq. [repealed];

(iii) Legislative Procedures (County), § 14-14-901 et seq.;

(iv) Executive Powers (County), § 14-14-1101 et seq.;

(v) Personnel Procedures (County), § 14-14-1201 et seq.;

(vi) Officers (County), § 14-15-101 et seq.;

(vii) Sale of county property generally, § 14-16-105, and Sale of surplus property, § 14-16-106;

(viii) County Funds, § 14-21-101 et seq.;

(ix) County Purchasing Procedures, § 14-22-101 et seq.;

(x) Claims Against Counties, § 14-23-101 et seq.;

(xi) County Warrants, § 14-24-101 et seq.;

(xii) The Arkansas County Accounting Law of 1973, § 14-25-101 et seq.;

(xiii) Correction of errors (on tax books), § 26-28-111;

(xiv) Settlement and payment of taxes: Time for payment, § 26-39-201; and

(xv) Review of audit reports by legislative governing bodies, § 10-4-219;

(B) Municipalities:

(i) Prohibited actions by municipal council members or municipal officials and employees: Interest in offices or contracts, etc. by council members prohibited, § 14-42-107, and Prohibited actions by municipal officials or employees — Penalty, § 14-42-108;

(ii) Powers and Duties Generally (of municipal officers), § 14-43-501 et seq.;

(iii) Purchase, lease, and sale of real and personal property: Purchase, lease, and sale authorized, § 14-54-302;

(iv) Cities of the first class generally: Fiscal Affairs of Cities and Incorporated Towns, § 14-58-101 et seq.;

(v) The Arkansas Municipal Accounting Law of 1973, § 14-59-101 et seq.;

(vi) The Arkansas Municipal Water and Sewer Department Accounting Law of 1973, § 14-237-101 et seq.;

(vii) Arkansas municipal courts, police courts, city courts, and justice of the peace courts accounting law: Accounting Practices § 16-10-201 et seq.; and

(viii) Review of audit reports by legislative governing bodies, § 10-4-219;

(C) Schools:

(i) School disbursing officer: Organization — Disbursing officer, § 6-13-618;

(ii) School district treasurer: District Treasurer, § 6-13-701 et seq.;

(iii) The Arkansas Teachers' Salary Law, § 6-17-901 et seq.;

(iv) School finance acts: Finances, § 6-20-101 et seq.;

(v) School's acquisition of commodities: Acquisition of Commodities Generally, § 6-21-301 et seq.; and

(vi) Review of audit reports by boards, § 6-1-101(d) and § 10-4-208(d);

(D) The following laws are applicable to some or all of the political subdivisions:

(i) Limitation on legislative and taxing power — Local bond issues, Arkansas Constitution, Article 12, § 4;

(ii) Political subdivisions not to become stockholders in or lend credit to private corporations, Arkansas Constitution, Article 12, § 5;

(iii) Lending credit — Bond issues — Interest-bearing warrants, Arkansas Constitution, Article 16, § 1;

(iv) Levy and appropriation of taxes, Arkansas Constitution, Article 16, § 11;

(v) Local Capital Improvement Bonds, Arkansas Constitution, Amendment 62;

(vi) Revenue Bonds, Arkansas Constitution, Amendment 65;

(vii) Clerks of courts, collection and settlement, additional fees, investment of moneys held in trust:

(a) Fines, penalties, taxes, etc. — Collection and settlement — Accounting— Audit and adjustment, § 16-20-106;

(b) Collection and payment of additional fees — Use of funds, § 16-20-107 [repealed];

(c) Investment of moneys held in trust — Disposition of funds, § 16-20-108;

(viii) Depositories for Public Funds, § 19-8-101 et seq.

(ix) Public Works, § 22-9-101 et seq.; and

(x) The Local Fiscal Management Responsibility Act, § 14-77-101 et seq.

**14-77-103. Compliance with fiscal responsibility and management laws — Investigation.**

(a) All public officers and employees shall comply with the provisions of the fiscal management and responsibility laws contained in this chapter.

(b) Upon discovery or notification of an alleged violation of the fiscal responsibility and management laws, the executive officer of the political subdivision shall investigate such allegations and take appropriate administrative action.

(c) After completing the investigation, if the executive officer of the political subdivision determines that one (1) or more of the fiscal responsibility and management laws have been violated, the facts and circumstances relating to a violation and any corrective or remedial action shall be documented and placed in the personnel files of the public officer or employee involved in the violation.

**History.** Acts 1991, No. 724, §§ 3-5.

**14-77-104. Notification of violation.**

(a) The executive officer of the political subdivision shall notify the public officer or employee of its findings and any corrective or remedial action to be taken.

(b) Notification shall be made in a manner ensuring actual notice to the public officer or employee.

(c) The public officer or employee shall be notified that the failure to make corrective or remedial action within thirty (30) days after the date of notification creates the rebuttable presumption that the violation was committed knowingly.

**History.** Acts 1991, No. 724, § 6.

**14-77-105. Remedial or corrective action.**

The public officer or employee violating a fiscal responsibility and management law shall be given not more than thirty (30) days from the date of notification to effect corrective or remedial action recommended by the executive director of the political subdivision. Failure to make corrective or remedial action within thirty (30) days after notification creates the rebuttable presumption that the violation was committed knowingly.

**History.** Acts 1991, No. 724, § 7.



**14-77-106. Investigation by prosecuting attorney.**

(a) If the executive officer determines that there has been a violation of the fiscal responsibility and management laws, the executive officer may request the appropriate prosecuting attorney to conduct an investigation regarding the violation.

(b) The Legislative Joint Auditing Committee may request the appropriate prosecuting attorney to conduct an investigation regarding violations of the fiscal responsibility and management laws documented in the audit report.

(c) The prosecuting attorney shall conduct a timely investigation into all matters referred to him under the provisions of this chapter. If the prosecuting attorney fails to conduct a timely investigation or file a civil suit under the provisions of this chapter, the executive officer or the Legislative Joint Auditing Committee may request the Attorney General to conduct an investigation into the violations.

**History.** Acts 1991, No. 724, § 8.

**14-77-107. Civil suit by prosecuting attorney.**

After conducting an investigation into the alleged violations, the appropriate prosecuting attorney or the Attorney General may file a civil suit in circuit court against the public officer or employee alleged to have violated the fiscal responsibility and management laws. Venue shall be in the county where the political subdivision is located.

**History.** Acts 1991, No. 724, § 9.

**14-77-108. Civil penalty.**

If the public officer or employee is found by the court to have knowingly violated the provisions of the fiscal responsibility and management laws, the court shall impose a civil penalty upon the public officer or employee of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000) for each violation, and may subject the public officer or employee to the payment of damages resulting as a direct consequence of any violation.

**History.** Acts 1991, No. 724, § 10.

**14-77-109. Recovery of costs.**

(a) If the public officer or employee is found by the court to have knowingly violated the provisions of the fiscal responsibility and management laws, the prosecuting attorney or the Attorney General shall be allowed to recover costs and attorney fees associated with the civil suit from the public officer or employee.

(b) Any costs or fees recovered by a prosecuting attorney under this provision shall be deposited into an account administered by the prosecuting attorney and shall be used for expenses of the office.

(c) Any costs or fees recovered by the Attorney General under this provision shall be deposited into the State Treasury.

**History.** Acts 1991, No. 724, § 11.

#### **14-77-110. Civil procedures apply.**

All actions and procedures under the provisions of this chapter are civil in nature and shall be governed by the appropriate rules, regulations, and laws regarding civil actions and remedies.

**History.** Acts 1991, No. 724, § 12.

#### **14-77-111. Existing remedies not impaired.**

The provisions of this chapter are supplemental to any other remedies available by law. In addition, the provisions of this chapter do not limit or diminish any civil rights or administrative procedures available to any public officer or employee or political subdivision.

**History.** Acts 1991, No. 724, § 13.

### **CHAPTERS 78-85**

[Reserved]

## ***SUBTITLE 5. IMPROVEMENT DISTRICTS GENERALLY***

### **CHAPTER 86**

### **GENERAL PROVISIONS**

#### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. PETITION TO ESTABLISH IMPROVEMENT DISTRICT.
3. NOTICE ON FORMATION OF IMPROVEMENT DISTRICT.
4. CORRECTING DEFECTS IN FORMATION OF IMPROVEMENT DISTRICT.
5. DESTRUCTION OF SECTION CORNERS IN IMPROVEMENT DISTRICTS.
6. ASSESSMENT IN IMPROVEMENT DISTRICTS.
7. TAX FOR PRELIMINARY EXPENSES OF IMPROVEMENT DISTRICT.
8. COLLECTION OF TAXES IN IMPROVEMENT DISTRICTS.
9. EXTENDING COLLECTION OF TAX IN IMPROVEMENT DISTRICT.
10. COLLECTION OF DELINQUENT IMPROVEMENT DISTRICT TAXES OR ASSESSMENTS.
11. DELINQUENT IMPROVEMENT TAXES AND ASSESSMENTS GENERALLY.
12. DELINQUENT IMPROVEMENT TAXES AND ASSESSMENTS IN COUNTIES WITH A POPULATION EXCEEDING 75,000.
13. DELINQUENT IMPROVEMENT TAXES AND ASSESSMENTS IN COUNTIES WITH A POPULATION EXCEEDING 150,000.
14. NOTICE TO SELL LAND FOR NONPAYMENT OF IMPROVEMENT DISTRICT ASSESSMENT.
15. RIGHT OF REDEMPTION OF DELINQUENT LANDS SOLD IN IMPROVEMENT DISTRICTS.
16. ENFORCEMENT OF IMPROVEMENT DISTRICT TAX LIEN WHEN LAND FORFEITED TO STATE FOR GENERAL TAXES.
17. REFUND OF MONEY IN IMPROVEMENT DISTRICT LAND SALE FORFEITURE UPON FAILURE OF TITLE.
18. BOND OF DEPOSITORIES FOR IMPROVEMENT DISTRICTS.

## SUBCHAPTER.

19. SURPLUS FUNDS IN IMPROVEMENT DISTRICTS.

20. AUDITS IN NONMUNICIPAL IMPROVEMENT DISTRICTS.

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**RESEARCH REFERENCES****C.J.S.** 82 C.J.S., Stat., § 98.

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**CASE NOTES****In General.**

Improvement districts are agents of the state and derive their limited powers and duties of a public and governmental nature by legislative delegation through the taxing power of the state, and constitute a

separate and distinct species of taxing districts as contradistinguished from counties, municipal corporations and school districts. *Quapaw Cent. Bus. Imp. Dist. v. Bond-Kinman, Inc.*, 315 Ark. 703, 870 S.W.2d 390 (1994).

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**SUBCHAPTER 1 — GENERAL PROVISIONS**

## SECTION.

14-86-101. Ratification of certain actions.

14-86-102. Mobile homes.

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**Effective Dates.** Acts 1929, No. 127, § 2: approved Mar. 13, 1929. Emergency clause provided: "This act, being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1993, No. 915, § 5: Apr. 7, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that current laws are uncertain with respect to whether the value of mobile/manufactured homes which are located on leased real property must be taken into account in determining the value of real property necessary to support the creation of cer-

tain improvement districts under the laws of Arkansas; that such uncertainty has resulted in inconsistent interpretations in the requirements for formation of such improvement districts, with attendant delays associated with obtaining necessary water, sewer and other improvement projects vital to the public peace, health and safety of the citizens of the state; and that the enactment of this legislation is necessary to eliminate the confusion and uncertainty which exists with respect to such laws. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

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**14-86-101. Ratification of certain actions.**

(a) All improvements which may have been made by any public improvement district in this state, whether made according to plans and specifications previously adopted or not, or whether made under incomplete plans or specifications, by any board of improvement of any highway improvement district created under the laws of the State of Arkansas, and all actions of boards of these districts in expending



money in the construction of improvements and procuring federal aid for use in the construction thereof, or paying the costs incident to construction, are ratified, approved, and confirmed, and declared to be beneficial to the taxpayers in any such district.

(b) This section shall not apply to districts whose boards have been guilty of fraud in appropriating the funds of the districts to their own uses.

**History.** Acts 1929, No. 127, § 1; Pope's Dig., § 6536; A.S.A. 1947, § 20-1104.

#### **14-86-102. Mobile homes.**

(a)(1) A mobile home or manufactured home of any width or description permanently affixed to a foundation on property which is owned by the owner of the mobile home or manufactured home shall be deemed real property for the purposes of the creation of special improvement districts and collection of assessments relative thereto.

(2) Mobile homes and manufactured homes located on leased property where the mobile home or manufactured home owner does not own any direct or indirect interest in the leased property shall be deemed personal property and shall not be considered real property for the purposes of the creation of special improvement districts and collection of assessments relative thereto.

(b)(1) Mobile homes and manufactured homes which are deemed personal property may not be assessed by special improvement districts, and the location of such mobile homes or manufactured homes shall not be cause for increasing the assessment on underlying property.

(2) No lien may be affixed to the mobile home or manufactured home to secure collection of any assessment.

(c) As used in this section, the term "permanently affixed to a foundation" shall mean permanently attached or affixed by bolting, welding, or mortaring to a structural foundation placed on or in the ground by means other than:

(1) Resting on concrete blocks or other devices used merely for leveling the floors of such structures; or

(2) Attachment of underpinnings, underskirts, or other tie-downs customarily employed primarily for cosmetic or weather resistance purposes; or

(3) A combination of methods described in subdivisions (1) and (2) of this subsection.

(d) This section shall apply to:

(1) All property located or to be located within improvement districts formed or with respect to which the initial assessment of benefits is made after April 7, 1993;

(2) All property annexed after April 7, 1993, to improvement districts which have been formed prior to April 7, 1993; and

(3) Any property presently located within any improvement district which has been formed and in which the initial assessment of benefits has been made prior to April 7, 1993.

(e) This section shall not apply to fire protection districts created pursuant to 14-284-201 et seq.

**History.** Acts 1993, No. 915, § 1.

## SUBCHAPTER 2 — PETITION TO ESTABLISH IMPROVEMENT DISTRICT

### SECTION.

14-86-201. Notice provision required.

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**Effective Dates.** Acts 1983, No. 739, § 4: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that many people who are asked to sign petitions for the establishment of improvement districts are not aware that their signature indicates that they favor the establishment of the district or that the establishment of the district may result in assessment of benefits (taxes) against their property; that fairness and equity demand that persons asked to sign a petition be advised of

the possible consequences and that the most appropriate way to so advise the people is by printing a notice on the front of the petition form; that this Act is designed to provide for printing of such notice on the form and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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### 14-86-201. Notice provision required.

(a) Each and every petition circulated in the state for the establishment of an improvement district of whatever nature shall contain on the front and near the top thereof the following notice, which shall be in letters at least one-fourth inch ( $\frac{1}{4}$ ") in height and shall be enclosed in a box in substantially the following form:

#### NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU FAVOR  
THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT.  
IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED  
FOR THE COST OF THE IMPROVEMENTS.

(b) It is unlawful for any person to circulate, or cause to be circulated, any petition for the establishment of an improvement district of whatever nature in this state which does not conform to the provisions of this section. Any person violating the provisions of this section shall be guilty of a Class C misdemeanor.

**History.** Acts 1983, No. 739, §§ 1, 2;  
A.S.A. 1947, §§ 20-104.1, 20-104.2.

## CASE NOTES

**Cited:** Hannah v. Deboer, 311 Ark. 215, 843 S.W.2d 800 (1992).

**SUBCHAPTER 3 — NOTICE ON FORMATION OF IMPROVEMENT DISTRICT**

## SECTION.

14-86-301. Definition.

14-86-302. Applicability.

## SECTION.

14-86-303. Requirements.

**14-86-301. Definition.**

As used in this subchapter, unless the context otherwise requires, “address” means the address as reflected on the official tax records of the county where the property is located.

**History.** Acts 1981, No. 546, § 1; A.S.A. 1947, § 20-1159.

**14-86-302. Applicability.**

(a) The provisions of this subchapter shall not be applicable to any city, county, or area which is under an order from the Arkansas Department of Pollution Control and Ecology and the Environmental Protection Agency to meet the minimum requirements of the Environmental Protection Agency for sanitary sewer discharge.

(b) The provisions of this subchapter shall not be applicable to levee, drainage, or road improvement districts.

**History.** Acts 1981, No. 546, § 1; A.S.A. 1947, § 20-1159.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’. (a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general

powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

**14-86-303. Requirements.**

(a) No improvement district shall be created unless a notice, prior to the hearing on the formation of the district, has been mailed by certified mail, return receipt requested, to the addresses of all owners of real property within the boundaries of the proposed improvement district.

(b) The notice shall inform the property owners of:

- (1) The proposal to form an improvement district;
- (2) The purpose and powers of the proposed district; and



(3) The names and addresses of the organizers of the district.

(c) The notice shall also notify the property owners of the date, time, and place of the hearing on the proposed formation of the improvement district.

**History.** Acts 1981, No. 546, § 1;  
A.S.A. 1947, § 20-1159.

### CASE NOTES

**Cited:** *Burris v. City of Little Rock*, 941  
F.2d 717 (8th Cir. 1991).

## SUBCHAPTER 4 — CORRECTING DEFECTS IN FORMATION OF IMPROVEMENT DISTRICT

### SECTION.

14-86-401. Construction.

14-86-402. Proceedings generally.

### SECTION.

14-86-403. Judgment conclusive.

**Cross References.** Creation of new district to replace void municipal improvement district, § 14-88-206.

**Effective Dates.** Acts 1919, No. 661,  
§ 4: effective on passage.  
Acts 1921, No. 503, § 5: approved Mar.

26, 1921. Emergency clause provided:  
"This act being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage."

### 14-86-401. Construction.

This subchapter is not intended to and does not repeal any existing remedy.

**History.** Acts 1919, No. 661, § 3;  
A.S.A. 1947, § 20-1103.

### 14-86-402. Proceedings generally.

(a)(1) Ten (10) resident citizens and property owners residing and owning property within any improvement district or road district within any county, city, or town, or within the territory to be intended to be included in the district may file with the clerk of the county court of the county in which the district is situated a petition setting forth the defects or irregularities sought to be corrected.

(2) The petitioners shall cause a notice of the filing of the petition and its purposes to be published in a paper of general circulation in the county for three (3) weeks before the petition shall be presented for hearing.

(b) Any of the property owners in the district shall have a right to appear and become parties to the petition or to file objections or an answer to protest and resist the granting of the petition.

(c)(1) Upon the hearing of the petition and answer or protest, the county court shall have full power and authority to correct any mistake or error in the formation or organization of the district.

(2)(A) The order of the county court shall be final and conclusive of the formation and organization of the district and any and all corrections in its formation or attempted formation.

(B)(i) Any interested parties to the record shall have the right to appeal, within fifteen (15) days from the judgment of the county court, to the circuit court.

(ii) The circuit court shall have the power to hear the case de novo and render judgment.

(d) When the boundaries of other districts are involved, ten (10) of the resident property owners in the other districts may join in the petition and notice, and the residents of the other districts shall have a right to appear and become parties to the proceedings or to resist them.

**History.** Acts 1919, No. 661, § 1; C. & 503, § 1; Pope's Dig., §§ 7372-7376; M. Dig., §§ 5636-5640; Acts 1921, No. A.S.A. 1947, § 20-1101.

#### CASE NOTES

**Cited:** Hannah v. Deboer, 311 Ark. 215, 843 S.W.2d 800 (1992).

#### 14-86-403. Judgment conclusive.

When a judgment is rendered by the county court in accordance with this subchapter, it shall be conclusive unless appealed from within fifteen (15) days, shall be binding upon all parties, and shall not be collaterally attacked.

**History.** Acts 1919, No. 661, § 2; C. & M. Dig., § 5641; Pope's Dig., § 7377; A.S.A. 1947, § 20-1102.

### SUBCHAPTER 5 — DESTRUCTION OF SECTION CORNERS IN IMPROVEMENT DISTRICTS

#### SECTION.

14-86-501. Applicability.

14-86-502. Penalty.

14-86-503. Duty to perform.

#### SECTION.

14-86-504. Location of corners and notes required.

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**Effective Dates.** Acts 1921, No. 82, § 7: effective on passage.

**14-86-501. Applicability.**

The provisions of this subchapter shall apply to engineers and commissioners in all improvement districts in this state.

**History.** Acts 1921, No. 82, § 4; Pope's Dig., § 3222; A.S.A. 1947, § 20-1108.

**14-86-502. Penalty.**

(a)(1) Any engineer or commissioner who shall neglect, fail, or refuse to comply with any of the provisions of this subchapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250).

(2) Twenty-five dollars (\$25.00) of the fine shall be paid to the informer.

(b) Each corner destroyed where there is a failure to comply with the provisions of this subchapter as to corners shall constitute a separate offense.

**History.** Acts 1921, No. 82, §§ 3, 5; Pope's Dig., §§ 3221, 3223; A.S.A. 1947, §§ 20-1107, 20-1109.

**14-86-503. Duty to perform.**

(a) It is made the duty of the commissioners of any district to cause the work described in § 14-86-504 to be done by the engineers.

(b) All corners destroyed shall be reestablished at once during the time construction work is being done in the district.

**History.** Acts 1921, No. 82, § 2; Pope's Dig., § 3220; A.S.A. 1947, § 20-1106.

**14-86-504. Location of corners and notes required.**

(a)(1) It shall be the duty of all engineers in the employ of any improvement district in this state or engineers doing any work for the improvement district, if the doing of the work or the construction of the improvement, or any work connected therewith, destroys any section corner or quarter section corner, to locate each corner so destroyed correctly in accord with the United States survey field notes of the corner and cause to be erected reference monuments of some indestructible material, which may be either concrete, stone, galvanized iron pipe, or cast iron posts not less than two-by-four inches (2" x 4") and sunk in the ground not less than three feet (3').

(2) The posts or monuments shall be placed forty-five degrees (45°) N. E., forty-five degrees (45°) N. W., forty-five degrees (45°) S. W., and forty-five degrees (45°) S. E., if possible, from the corner and shall be far enough away from the corner so as not to be covered up or destroyed in constructing the improvements.



(b)(1) A copy of the engineer's notes of his locating the survey of each corner and the monuments thereto shall be kept. The notes shall tell how he proceeded in locating each corner, giving the course and distance from the true corner that each witness or monument is placed, and the kind of monument. The notes shall be so full and complete that any surveyor can, from the notes, find the corner without difficulty.

(2) The notes shall be filed by the engineer in the office of the county clerk in the county in which the corners are situated and shall be recorded by the clerk in a book kept for that purpose. The book shall be correctly indexed as to section, township, and range so as to be readily referred to or found from the index.

(c) The cost or charge for locating the corners and recording the notes shall be paid by the district as a part of the cost of the construction of the improvement.

**History.** Acts 1921, No. 82, § 1; Pope's Dig., § 3219; A.S.A. 1947, § 20-1105.

## SUBCHAPTER 6 — ASSESSMENT IN IMPROVEMENT DISTRICTS

### SECTION.

14-86-601. Partition among several owners.

14-86-602. Assessed benefits not reduced.

14-86-603. State agencies and commissions owning land to pay assessments.

### SECTION.

14-86-604. Exemptions.

14-86-605. Assessments to be paid from date of implementation — Applicability.

14-86-606. Sale or transfer of land.

14-86-607. Exclusions.

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**Effective Dates.** Acts 1919, No. 404, § 2: approved Mar. 27, 1919. Emergency declared.      Acts 1919, No. 515, § 2: approved Mar. 28, 1919. Emergency declared.

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### 14-86-601. Partition among several owners.

Wherever lands or other real property in an improvement district are assessed in one (1) body and are at the time owned in separate parcels or where the ownership subsequently becomes divided, any owner of any part of the property may apply to the chancery court of the county where the lands, or some part thereof, lie, making defendants in his suit the other parties interested in the lands. Thereupon, it shall be the duty of the court to partition the assessment against the lands among the several owners thereof, as equity and good conscience may require.

**History.** Acts 1919, No. 404, § 1; C. & M. Dig., § 5634; Pope's Dig., § 7302; A.S.A. 1947, § 20-1116.

**CASE NOTES****Applicability.**

This section does not authorize dividing annual tax assessments which have become due and have not been paid; it au-

thorizes proration of subsequent and future assessments against the property. *Home Owners' Loan Corp. v. Paving Dist.*, 199 Ark. 506, 135 S.W.2d 59 (1939).

**14-86-602. Assessed benefits not reduced.**

Where any improvement district shall have issued bonds or incurred indebtedness, the total amount of the assessed benefits shall never be reduced upon a reassessment.

**History.** Acts 1919, No. 515, § 1; C. & M. Dig., § 5635; Pope's Dig., § 7301; A.S.A. 1947, § 20-1115.

**CASE NOTES**

**Cited:** *Sugarloaf Dev. Co. v. Heber Springs Sewer Imp. Dist.*, 34 Ark. App. 28, 805 S.W.2d 88 (1991).

**14-86-603. State agencies and commissions owning land to pay assessments.**

It is hereby found and determined by the General Assembly that some state agencies and commissions owning land within levee, drainage, or other improvement or special assessment districts do not pay the assessments; that such land may be benefitted by the assessment levied by the district; that although public property used exclusively for public purposes is exempt from ad valorem property taxation under the Arkansas Constitution, the Arkansas Supreme Court has distinguished a tax from an assessment, stating that the word "taxes" refers to exactions laid by the government for the purpose of general revenues and that the word "assessments" refers to exactions laid for making improvements; and that state agencies and commissions owning land in these districts should pay the assessments levied by the districts because they benefit from the districts' improvements.

**History.** Acts 1991, No. 877, § 1.

**A.C.R.C. Notes.** The Arkansas Supreme Court case referred to in this sec-

tion is *Rainwater v. Haynes*, 244 Ark. 1191, 428 S.W.2d 254 (1968).

**14-86-604. Exemptions.**

(a) It is hereby found and determined by the Seventy-eighth General Assembly that all property owned by the Arkansas State Highway Commission or the Arkansas State Highway and Transportation Department is public property used exclusively for public purposes.

(b) Since neither the commission nor the department pursuant to Arkansas Constitution, Article 16, § 5, are required to pay real or personal property taxes on real estate and tangible personal property

owned by that commission or department, likewise, notwithstanding any provision of law or any provision in §§ 14-86-603 — 14-86-606 to the contrary, the commission and department shall not be required to pay any improvement district assessments that may be assessed against the commission or department as a result of such ownership.

**History.** Acts 1991, No. 877, § 2.

agency name. It is actually the State Highway Commission.

**A.C.R.C. Notes.** The Arkansas State Highway Commission is an incorrect

#### **14-86-605. Assessments to be paid from date of implementation — Applicability.**

(a) Any state agency or commission, including the Arkansas State Game and Fish Commission, owning real property located within a levee, drainage, or any other improvement or district and benefiting from the district shall pay the assessments levied by such districts from the date of implementation.

(b) However, the provisions of this section shall not apply retroactively to lands owned by state agencies prior to July 15, 1991, unless the state agencies were already paying taxes or assessments on their lands.

(c) This section shall not apply to the Commissioner of State Lands.

**History.** Acts 1991, No. 877, § 3.

#### **14-86-606. Sale or transfer of land.**

The sale or transfer of real property located within a levee, drainage, or other improvement or special assessment district to a state agency or commission, including the Arkansas State Game and Fish Commission, if benefitted by the stated purpose of the improvement district, shall not extinguish any lien for delinquent assessments of such districts or relieve the purchaser or transferee of liability for delinquent assessments in such districts.

**History.** Acts 1991, No. 877, § 4.

#### **14-86-607. Exclusions.**

(a) At its option, any state agency or commission may be excluded from any newly formed levee, drainage, or other improvement or special assessment districts.

(b) If the purpose of the improvement district does not benefit the affected lands, then no taxes or assessments will apply to the nonserved lands. Sections 14-86-606 and 14-86-607 shall not apply to the Commissioner of State Lands.

**History.** Acts 1991, No. 877, § 4.



## SUBCHAPTER 7 — TAX FOR PRELIMINARY EXPENSES OF IMPROVEMENT DISTRICT

### SECTION.

14-86-701. Authority to levy.

14-86-702. Issuance of bonds.

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**Cross References.** Levy of tax for preliminary expenses in drainage districts, § 14-121-422.

Levy of tax in suburban improvement districts, § 14-92-238.

**Effective Dates.** Acts 1923, No. 562, § 4: approved Mar. 22, 1923. Emergency clause provided: "All laws and parts of

laws in conflict with this act are hereby repealed; and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

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### 14-86-701. Authority to levy.

(a)(1) In all improvement districts in this state, the county court or board of commissioners or directors is authorized and empowered, upon the completion of the assessment of benefits and its confirmation, to levy and collect a tax. This tax shall be based upon the assessment of benefits and collectible from the real property in the district in the proportion of the respective assessments of benefits against the several pieces of property for the purpose of paying preliminary expenses wherever it is deemed prudent not to proceed immediately with construction and not to wind up the district.

(2) The tax shall be levied and collected in the same manner as is provided for the levy and collection of the taxes of the district for the purpose of construction.

(b) If any improvement district is abandoned before the making of the assessment of benefits, the tax for preliminary expenses shall be levied upon the real estate therein, upon the basis of the assessment for county and state purposes.

**History.** Acts 1923, No. 562, § 2; Pope's Dig., § 4466; A.S.A. 1947, § 20-1117.

### 14-86-702. Issuance of bonds.

(a) In case the directors or commissioners of any improvement district find it desirable to do so, they may issue coupon bonds or other negotiable evidences of indebtedness for the purpose of raising money to pay preliminary expenses.

(b) These bonds or other evidences of indebtedness may be issued, from time to time, in payment for preliminary work done. The directors or commissioners may secure the payment of the bonds by a pledge and

mortgage of the assessment of benefits whenever the assessment of benefits has been confirmed.

**History.** Acts 1923, No. 562, § 3; Pope's Dig., § 4467; A.S.A. 1947, § 20-1118.

**Cross References.** Refunding bonds, § 14-121-445.

## SUBCHAPTER 8 — COLLECTION OF TAXES IN IMPROVEMENT DISTRICTS

### SECTION.

14-86-801. Collection in levee, drainage, and road districts.

14-86-802. Collection in municipal, bridge, suburban, and road districts.

### SECTION.

14-86-803. Payment and redemption with district bonds.

**Preambles.** Acts 1933, No. 46 contained a preamble which read: "Whereas, abuses are prevalent in receiverships of levee, drainage and road districts, in the allowance of excessive fees to counsel for filing suits for receivers, the allowance of excessive fees to receivers, the appointment of unnecessary attorneys for receivers and the allowance of excessive fees to them, all of which imposes an additional financial burden on the landowners of the district; and

"Whereas, the collection officers provided by law can collect improvement district taxes more expeditiously and at less expense than receivers, if they are made to discharge their duties;

"Now, therefore..."

Act 1933, No. 79 contained a preamble which read: "Whereas, abuses are prevalent in receiverships of municipal, bridge, suburban and road maintenance improvement districts, in the allowance of excessive fees to counsel for filing suits for receivers, the allowance of excessive fees to receivers, the appointment of unnecessary attorneys for receivers and the allowance of excessive fees to them, all of which imposes an additional financial burden on the landowners of the districts; and

"Whereas, the collection officers provided by law can collect improvement district taxes more expeditiously and at less expense than receivers, if they are made to discharge their duties;

"Now, therefore..."

Acts 1939, No. 100 contained a preamble which read: "Whereas, it being ascertained by the General Assembly of the State of Arkansas, now in regular session,

that an emergency now exists and that said emergency effects a vast number of the home owners and land owners of the State, and also the bond holders owning bonds issued by improvement districts within the State of Arkansas, that the cause of the emergency with excessive assessments on the lands and homes of many of the inhabitants of the State of Arkansas for improvement purposes and the impossibility of the payment of such assessments by the owners of the lands located in improvement districts, which assessments coupled with the general depression which is recognized to exist within the United States of America, is causing the land owners to lose their homes and the bond holders to lose their investment in the bonds..."

**Effective Dates.** Acts 1933, No. 46, § 2: approved Feb. 18, 1933. Emergency clause provided: "As this act is intended to prevent abuses in the administration of justice, to require improvement district officers to perform their legal duties, and to relieve the lands in improvement districts from the payment of unnecessary expenses, an emergency is hereby declared and this act shall take effect and be in force from and after its passage."

Acts 1933, No. 79, § 2: approved Mar. 7, 1933. Emergency clause provided: "As this act is intended to prevent abuses in the administration of justice, to require improvement district officers to perform their legal duties, and to relieve the lands in improvement districts from the payment of unnecessary expense, an emergency is hereby declared and this act shall take effect and be in force from and after its passage."

Acts 1939, No. 100, § 3: approved Feb. 17, 1939. Emergency clause provided: "It being ascertained by the General Assembly that by reason of the fact that a great financial depression exists within the State of Arkansas that land values have greatly depreciated within the past few years, that many people are losing their homes and their lands by reason of their inability to pay the assessments imposed on such lands in improvement districts, and that many persons owning the bonds of such improvement districts are unable to collect such bonds, or the interest thereon, and this act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and all laws in conflict herewith are hereby repealed, and this act shall become in full force and effect from and after its passage."

Acts 1949, No. 238, § 2: Mar. 4, 1949. Emergency clause provided: "It is hereby ascertained and declared that in such levee, drainage and road districts as are now without a duly appointed, qualified and acting Board of Commissioners, land-owners are without an authorized collector to whom payments of annual installments of assessed benefits, current and delinquent, may be paid and the lien thereof satisfied; that the situation resulting therefrom unduly interferes with the alienation of property in said districts, unnecessarily burdening the owners thereof by clouding the title thereto, and that an emergency therefore exists, and this Act being necessary for the preservation of the public peace, health and safety, the same shall take effect and be in force from and after its passage and approval."

### CASE NOTES

#### In General.

Improvement districts are agents of the state and derive their limited powers and duties of a public and governmental nature by legislative delegation through the taxing power of the state, and constitute a

separate and distinct species of taxing districts as contradistinguished from counties, municipal corporations and school districts. *Quapaw Cent. Bus. Imp. Dist. v. Bond-Kinman, Inc.*, 315 Ark. 703, 870 S.W.2d 390 (1994).

### 14-86-801. Collection in levee, drainage, and road districts.

(a) All taxes in levee, drainage, and road improvement districts shall be collected at the time, in the manner, and by the officers specified in the statutes creating them or under which they were organized if there is then a duly appointed, qualified, and acting board of commissioners for the district.

(b) The duty to promptly extend and collect these taxes may be enforced by mandamus or by a mandatory injunction in equity, at the instance of any landowner in the district, the trustee in any deed of trust securing the bonds of the district, the holder of any bond as to which the district has defaulted in the payment of interest or principal, or any other creditor of the district.

(c) The remedies provided in this section shall be exclusive, and all laws providing for or authorizing the appointment of a receiver for any such district having a duly appointed, qualified, and elected board are repealed. No court shall appoint a receiver to collect levee, drainage, or road district taxes in a district having such a board.

**History.** Acts 1933, No. 46, § 1; Pope's Dig., § 4591; Acts 1949, No. 238, § 1; A.S.A. 1947, § 20-1121.



## CASE NOTES

## ANALYSIS

Constitutionality.  
Jurisdiction.

**Constitutionality.**

This section is not unconstitutional as impairing the obligation of contracts as applied to preexisting trust deeds or mortgages securing an improvement district's bonds. *Drainage Dist. No. 2 v. Mercantile-Commerce Bank & Trust Co.*, 69 F.2d 138

(8th Cir. 1934), cert. denied, 293 U.S. 566, 55 S. Ct. 77, 79 L. Ed. 665 (1934).

**Jurisdiction.**

The power to compel collection of drainage taxes by mandatory injunction against the officers of the improvement district may be exercised by the federal district court. *Kersh Lake Drainage Dist. v. State Bank & Trust Co.*, 138 F.2d 486 (8th Cir. 1943), cert. denied, 320 U.S. 802, 64 S. Ct. 428, 88 L. Ed. 484 (1943).

**14-86-802. Collection in municipal, bridge, suburban, and road districts.**

(a) All taxes in municipal, suburban, bridge, and road improvement districts shall be collected at the time, in the manner, and by the officers specified in the statutes creating them, or under which they were organized.

(b) The duty to promptly extend and collect these taxes may be enforced by mandamus or by a mandatory injunction in equity, at the instance of any landowner in the district, the trustee in any deed of trust securing the bonds of the district, the holder of any bond as to which the district has defaulted in the payment of interest or principal, or any other creditor of the district.

(c) The remedies provided in this section shall be exclusive, and all laws providing for or authorizing the appointment of a receiver for any such district are repealed. No court shall appoint a receiver to collect municipal, bridge, suburban, or road district taxes.

**History.** Acts 1933, No. 79, § 1; Pope's Dig., §§ 6540, 7336; A.S.A. 1947, § 20-1120.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Applicability.  
Delinquent assessments.  
Enforcement of duty.  
Receivers.

**Constitutionality.**

This section is not invalid as an abridgment of the jurisdiction of the courts of equity. *Dickinson v. Mingea*, 191 Ark. 946, 88 S.W.2d 807 (1935).

**Applicability.**

This section is not retroactive and has no applicability to a receivership pending

at the time it was enacted. *Cutsinger v. Strang*, 203 Ark. 699, 158 S.W.2d 669 (1942).

**Delinquent Assessments.**

Even though foreclosure sale of sewer improvement district plans was held valid where the proceedings had lain dormant for a period of 15 years and there was some question as to the validity of the sale, it was proper for the chancery court to order the commissioners of the district to collect all delinquent assessments with a notice that the owners of the delinquent lands could redeem them by the payment of the delinquency, with accumulated interest, within 90 days from the date of the

notice. *Whitaker & Co. v. Sewer Imp. Dist.* No. 1, 229 Ark. 697, 318 S.W.2d 831 (1958).

#### **Enforcement of Duty.**

The provisions of this section may be invoked by the holder of any bond of a municipal improvement district which has defaulted in the payment of interest or principal thereof. *Dickinson v. Mingea*, 191 Ark. 946, 88 S.W.2d 807 (1935).

#### **Receivers.**

Chancery court's appointment of a receiver to take charge of assets of paving district was held in violation of this sec-

tion, and allowance of fee to receiver and attorneys was error. *Rogers Paving Imp. Dist. v. Swofford*, 193 Ark. 260, 99 S.W.2d 577 (1936).

Where original owner of property filed an action 10 years after foreclosure sale and attacked validity of purchaser's title on the ground that receiver was appointed illegally, such illegality in appointment of receiver did not affect title of purchaser, as district had title at time of sale to purchaser and period of redemption against district is restricted to five years. *Schuman v. Cherry*, 215 Ark. 342, 220 S.W.2d 817 (1949).

### **14-86-803. Payment and redemption with district bonds.**

(a) It shall be lawful for any person, firm, or corporation owning lands in any drainage district, levee district, or other improvement districts within the State of Arkansas to pay any part or all of the assessments against their respective lands located in the drainage district, levee district, or other improvement districts with bonds issued by the district.

(b)(1) It shall be lawful for any collector or improvement district commissioner or person lawfully designated to collect improvement district assessments to accept these bonds as payment, in part or in full, of any assessment imposed upon any land within any improvement district as payment of any past due assessments or assessments to become due and payable.

(2) The collector or other person lawfully designated to collect improvement district assessments in making his settlements with any district shall only apply such bonds on the settlement as he has actually received in payment of assessments or redemptions. He shall furnish the districts with a sworn statement setting out the names of property owners paying with bonds and the amounts of assessments each individual has paid in bonds.

(c)(1) In the making of their payments, the landowners may pay with either past due bonds or bonds to become due in the future issued by the proper authority of the particular district for which payment is being made.

(2)(A) It also shall be lawful for any person, firm, or corporation whose lands have been sold and which lands are owned by an improvement district and have not been resold to a private individual, firm, or corporation to redeem the lands or repurchase them with the bonds either past due or to become due of the particular district where the land is located and assessed for improvement purposes.

(B) The commissioner of any and all districts are authorized to execute to the person redeeming or repurchasing the lands a deed conveying all right, title, and interest of the district in and to the lands, subject, however, to any unpaid assessments that may accrue

after the purchase or redemption. All bonds used in the payment of assessments, redemption, or repurchase of lands, as provided for in this section, shall be accepted at face value.

(d)(1) The provision of this section shall in no way interfere or prevent the reassessment against any lands in any improvement district as provided by law.

(2) In the event any landowner shall have paid all assessments against his lands, including past due assessments and future assessments, nothing in this section shall prevent additional assessments against any such lands that may be made under any existing law.

**History.** Acts 1939, No. 100, §§ 1, 2; A.S.A. 1947, §§ 20-1122, 20-1123.

### CASE NOTES

#### ANALYSIS

Constitutionality.  
Powers of commissioners.

#### Constitutionality.

Former similar statute held valid. *Watson v. Barnett*, 191 Ark. 990, 88 S.W.2d 811 (1935) (decision under prior law).

#### Powers of Commissioners.

Drainage district commissioner had right to purchase and acquire lands in the district from other owners and also to remove the lien of the district against such lands by using bonds of the district. *Bishop v. Gregory*, 201 Ark. 448, 144 S.W.2d 1083 (1940) (decision under prior law).

## SUBCHAPTER 9 — EXTENDING COLLECTION OF TAX IN IMPROVEMENT DISTRICT

#### SECTION.

14-86-901. Applicability.  
14-86-902. County clerk's commission.  
14-86-903. Additional deputy clerks.

#### SECTION.

14-86-904. Tax collector's commission.  
14-86-905. Additional deputy tax collectors.

**Preambles.** Acts 1961, No. 427 contained a preamble which read: "Whereas, the several County Clerks are now obligated by law to extend certain improvement district taxes and the failure to make uniform the fees to be allowed for such service results in injustice and confusion and may retard and hinder the orderly process of the administration of such improvement districts;

Now, therefore..."

**Effective Dates.** Acts 1961, No. 427, §§ 5, 6: Jan. 1, 1961. Emergency clause provided: "It is hereby found and declared

by the General Assembly that many county clerks are obligated by law to extend certain improvement taxes, that the fees allowed for such additional duties are not uniform throughout the State, that uniformity in such fees is necessary to the orderly administration of such districts. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after its passage and approval." Approved March 15, 1961.



**14-86-901. Applicability.**

This subchapter shall not apply to any improvement district that collects its annual assessments or taxes by a collector other than the collector of the state and county taxes, nor shall this subchapter apply to any improvement taxes of any district which maintains a permanent office open during business hours throughout the year and which has full-time employees in charge of it.

**History.** Acts 1961, No. 427, § 1; 1963, No. 505, § 1; A.S.A. 1947, § 20-1152.

**14-86-902. County clerk's commission.**

In all counties in this state in which the county clerks are required by law to extend any improvement taxes, whether the taxes are from municipal, suburban, road, fire, drainage district, or otherwise, the county clerk of any such county shall receive, for his services in extending the tax annually upon the books of his county, a commission necessary to reimburse the clerk for the cost of extending the taxes. However, in no event may the commission exceed two percent (2%) of the amount so extended.

**History.** Acts 1961, No. 427, § 1; 1963, No. 505, § 1; A.S.A. 1947, § 20-1152.

**14-86-903. Additional deputy clerks.**

County clerks are authorized to employ additional deputies to handle the additional work load imposed. They may pay the deputies salaries up to the sum of three thousand six hundred dollars (\$3,600) per annum. However, these salaries shall never exceed the receipts from the commissions allowed by this subchapter.

**History.** Acts 1961, No. 427, § 2; A.S.A. 1947, § 20-1153.

**14-86-904. Tax collector's commission.**

In counties operating under the unit tax ledger system, the county tax collector shall receive a commission of two percent (2%) for extending the improvement taxes and a commission of an additional two percent (2%) for collecting them.

**History.** Acts 1961, No. 427, § 3; A.S.A. 1947, § 20-1154.

**14-86-905. Additional deputy tax collectors.**

County tax collectors shall be authorized to employ additional deputies subject to the limitations in § 14-86-903.

**History.** Acts 1961, No. 427, § 3;  
A.S.A. 1947, § 20-1154.

**SUBCHAPTER 10 — COLLECTION OF DELINQUENT IMPROVEMENT DISTRICT  
TAXES OR ASSESSMENTS**

## SECTION.

14-86-1001. Authority and responsibility generally.

14-86-1002. Remission of delinquent penalties.

## SECTION.

14-86-1003. Relief from penalties in apportioned assessment.

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**Effective Dates.** Acts 1941, No. 268, § 3: Mar. 26, 1941. Emergency clause provided: "Because of strained financial conditions, and because property owners are unable to pay taxes on real property situated within the State of Arkansas, forcing them thereby to lose their lands, an emergency is found and declared to exist, and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1971, No. 710, § 3: Apr. 28, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of this

State it is the responsibility of the circuit or chancery court clerk in each county to collect the delinquent taxes or assessments of improvement districts in the county; that this places an unjust burden on the clerks in the respective counties and that this responsibility of the collection of such delinquent taxes and assessments should be vested in the tax collector in each county and that this Act is designed to correct this situation. Therefore, an emergency is hereby declared and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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**14-86-1001. Authority and responsibility generally.**

(a) All authority and responsibility vested in the circuit clerk or chancery clerk for the collection of delinquent taxes or assessments of improvement districts are transferred to and vested in the tax collector in each county.

(b) The tax collector shall perform all actions in the matter of collecting delinquent taxes and assessments of improvement districts required of the clerks and shall be entitled to such fees therefor as is provided by law for these clerks.

(c) All laws in effect in this state relating to the collection of delinquent taxes or assessments of improvement districts which refer to the collection of these taxes by the circuit or chancery clerk shall be deemed to be applicable to the tax collector in each county.

**History.** Acts 1971, No. 710, § 1;  
A.S.A. 1947, § 20-1155.

### **14-86-1002. Remission of delinquent penalties.**

The board of improvement of any levee, drainage, street improvement, and other districts, however created, may remit, by resolution duly adopted of a general character applicable alike to all lands and property assessed in the districts for taxes, all that part of any penalty which has accrued upon delinquent tax assessments, in excess of ten percent (10%) for these tax delinquencies.

**History.** Acts 1941, No. 268, § 1;  
A.S.A. 1947, § 20-1130.

### **14-86-1003. Relief from penalties in apportioned assessment.**

(a) On any acreage tract of land embraced in any municipal improvement district located in the municipality, where two (2) or more property owners own different portions of such an acreage tract, the benefits to which were assessed as a unit or with one (1) assessment of benefits for the entire tract, and a majority of the property owners desire to pay their just part of the assessment of benefits but cannot pay it because the assessment is on the entire tract and not apportioned to each parcel of the tract as owned, any one of the respective owners may apply to a court of competent jurisdiction for an apportionment of the assessment, making the other owners of the tract embraced in the unit assessment defendants.

(b) Upon payment of the apportioned assessment as fixed by the court, the person so paying shall be relieved of all penalties accruing prior to the apportionment of the assessment as fixed by the court.

**History.** Acts 1941, No. 268, § 1;  
A.S.A. 1947, § 20-1130.

## **SUBCHAPTER 11 — DELINQUENT IMPROVEMENT TAXES AND ASSESSMENTS GENERALLY**

#### **SECTION.**

- 14-86-1101. Definition.
- 14-86-1102. Applicability.
- 14-86-1103. Lists of delinquent realty.
- 14-86-1104. Recording of delinquent list.

#### **SECTION.**

- 14-86-1105. Redemption of land on delinquent list.
- 14-86-1106. Suit for collection of taxes.

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**Effective Dates.** Acts 1921, No. 534, § 6: approved Mar. 26, 1921. Emergency clause provided: "This act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be enforced from and after its passage."

Acts 1931, No. 227, § 2: effective on passage.

Acts 1939, No. 163, § 4: approved Feb. 28, 1939. Emergency clause provided: "This act being necessary for the immediate preservation of the public health and security, an emergency is hereby declared,



and this act shall be in force and effect from and after its passage.”

**14-86-1101. Definition.**

As used in this subchapter, unless the context otherwise requires, “real property” means all property assessed for the improvement within the district including lands, town lots, railroads, tramroads, bridges, and any other real property.

**History.** Acts 1921, No. 534, § 5; Pope’s Dig., § 13892; A.S.A. 1947, § 20-1129.

**14-86-1102. Applicability.**

The provisions of this subchapter do not apply to the counties of Hot Spring, Boone, Lawrence, Faulkner, White, Sevier, and Stone.

**History.** Acts 1921, No. 534, § 5; Pope’s Dig., § 13892; A.S.A. 1947, § 20-1129.

**14-86-1103. Lists of delinquent realty.**

(a) All taxes or assessments levied on the real property in any road improvement, drainage, levee, or fencing district in this state, to which this subchapter applies, if not paid on or before October 1 of the year in which it is due, as required by law, shall be delinquent. The tax collector of the county in which the property is situated shall, in those districts where it is his duty to do so, on or before October 15, make out a list of the real property so delinquent.

(b) The list shall include:

- (1) The name of the supposed owner as it appears on the tax books;
- (2) A description of the property; and
- (3) The amount of the tax due thereon.

(c) Before the list is filed, the collector shall make an affidavit that it is true and correct.

(d) A separate list shall be made for each improvement district.

**History.** Acts 1939, No. 163, § 1; A.S.A. 1947, § 20-1124.

**CASE NOTES**

**ANALYSIS**

**Applicability.**  
Names of supposed owners.

**Applicability.**  
The provisions of this section were held not to affect any rights already fixed un-

der acts creating improvement districts. *Miller Levee Dist. v. Evers*, 200 Ark. 53, 137 S.W.2d 915 (1940).

**Names of Supposed Owners.**

Where, in foreclosure sale, this section was complied with in that the name of

supposed owner was given as “appears on the tax books,” it was not necessary that investigation be undertaken to determine supposed owner as was formerly required. *Leonard v. Thompson*, 228 Ark. 136, 306 S.W.2d 869 (1957).

Where the purchaser of land recorded his deed, but neglected to have the land

assessed for taxation, notice to the purchaser’s grantor of foreclosure for delinquent drainage district taxes was sufficient. *Sadler v. Hill*, 243 Ark. 247, 419 S.W.2d 298 (1967).

**Cited:** *Isaack v. Davis*, 254 Ark. 115, 491 S.W.2d 784 (1973).

#### **14-86-1104. Recording of delinquent list.**

(a) The county tax collector shall record the list in a well-bound book kept by him for that purpose preceding the list by a caption, which may be in substance as follows:

“The lands, town lots, railroads, tramroads, and bridges returned delinquent in ..... (stating corporate name of the district) ..... for the nonpayment of taxes due said district for the year 19 ....., together with tax, penalty and cost chargeable thereon are contained and described in the following list.”

(b)(1) Then shall be copied the delinquent list filed by the collector together with the names of the supposed owners and the certificate of the collector and the date of the filing, and the collector shall add the penalty prescribed by law to the tax.

(2)(A) The collector shall append at the foot of the list a certificate that it is a true copy of the list filed by the collector.

(B)(i) The certificate shall show the date of filing and recording of the delinquent list.

(ii) The certificate shall be conclusive evidence that the list was filed and recorded as stated in the certificate.

**History.** Acts 1921, No. 534, § 2; Pope’s Dig., § 13889; A.S.A. 1947, § 20-1126.

#### **14-86-1105. Redemption of land on delinquent list.**

(a) Anyone desiring to redeem any of the delinquent lands, town lots, railroads, tramroads, bridges, or other real property included in the list shall apply to the county tax collector.

(b) Upon the payment of the tax, penalty, interest, and costs, the collector shall issue a redemption certificate in triplicate, a copy of which shall be sent to the secretary of the board of improvement of the district. A copy shall also be sent to the treasurer of the district, or the depository, if one. The collector shall immediately remit the amount of the tax, penalty, and interest to the treasurer of the depository of the district and shall mark opposite the tract by whom redeemed and the date of the payment.

(c) For his services on filing and recording the list, the collector shall be entitled to the sum of ten cents (10¢) per tract, which shall be added as cost and, if not redeemed by the owner, paid by the district.

(d) If the lands are redeemed, the collector shall be entitled to the sum of one dollar (\$1.00) per tract as a redemption fee, which sum, with the cost of recording, shall be paid by the party redeeming and charged as cost against the tract.

**History.** Acts 1921, No. 534, § 3; 1931, No. 227, § 1; Pope's Dig., § 13890; A.S.A. 1947, § 20-1127.

## CASE NOTES

### ANALYSIS

Payment of tax, etc.  
Redemption fee.  
Statute of limitations.

### Payment of Tax, Etc.

By depositing the proper amount within the statutory period, an owner perfects his right to redeem the property, and he is not required to notify anyone of the redemption payment, nor is any court proceeding necessary to effect redemption. *Killian v. Lincoln Nat'l Life Ins. Co.*, 201 Ark. 1137, 148 S.W.2d 1085 (1941).

### Redemption Fee.

A fee of \$1.00 for redemption of lands sold for improvement taxes must be treated as one of the fees which is re-

quired to be collected and paid into the county treasury. *Swearingen v. State ex rel. Benton County*, 160 Ark. 326, 254 S.W. 537 (1923).

### Statute of Limitations.

Action by former owner of land sold for payment of levee district assessment who redeemed from the sale within the period allowed by law for writ of assistance to obtain possession from purchasers from district prior to expiration of redemption period was held not subject to statute of limitations as to judicial sales. *Lincoln Nat'l Life Ins. Co. v. Smith*, 205 Ark. 1023, 172 S.W.2d 241 (1943).

**Cited:** *Locust Creek Drainage Dist. v. Seay*, 190 Ark. 739, 81 S.W.2d 835 (1935).

## 14-86-1106. Suit for collection of taxes.

(a)(1) When the board of improvement or anyone authorized by law to file suit for the collection of delinquent taxes desires to commence a suit, they shall obtain a certified copy of the list from the county tax collector, which shall be filed with the complaint and taken as a part thereof.

(2) For making the list, the county tax collector shall be entitled to ten cents (10¢) per tract, which shall be taxed as costs in the suit.

(b) No suit for the collection of delinquent taxes shall be brought after three (3) years from date they became delinquent.

**History.** Acts 1921, No. 534, § 4; Pope's Dig., § 13891; A.S.A. 1947, § 20-1128.

**Cross References.** Applicability of 1949 provisions, § 14-90-102.

## CASE NOTES

### ANALYSIS

Delinquent taxes.  
Judgments.  
Limitation of actions.  
—Interest.

### Delinquent Taxes.

Taxes are delinquent when the taxpayer fails to pay taxes on or before the day fixed by law for payment. *Tallman v. Board of Comm'rs*, 185 Ark. 851, 49 S.W.2d 1039 (1932).



Annual assessments of a drainage district were due and payable from the first Monday in January of each year to and including April 10, and became delinquent thereafter. *Tarleton Drainage Dist. v. American Inv. Co.*, 186 Ark. 20, 52 S.W.2d 738 (1932).

### **Judgments.**

Where realty owner paid levee district taxes and received the regular redemption certificate, but the clerk inadvertently failed to make the endorsement in the delinquent record so that a default decree of foreclosure resulted, on motion to set the judgment aside, it was held that there was an unavoidable casualty or misfortune which prevented the owner from appearing or defending the suit. *Wilder v. Harris*, 205 Ark. 341, 168 S.W.2d 804 (1943).

### **Limitation of Actions.**

This section contemplates that suit

shall be brought within the time fixed. *Western Clay Drainage Dist. v. Wynn*, 179 Ark. 988, 18 S.W.2d 1035 (1929).

Although the limitations of § 14-86-1208 would not apply to an improvement district, the identical provisions of this section would. *Davidson v. Hartsfield*, 250 Ark. 1072, 468 S.W.2d 774 (1971).

### **—Interest.**

Question of whether interest on assessment is barred by limitations need not be considered in proceeding by receiver to procure instructions of chancery court to permit receiver to apply to county court for order of collection, but such question may be raised in a suit for the collection of such interest. *Greer v. Blocker*, 218 Ark. 259, 236 S.W.2d 68 (1951).

**Cited:** *Isaack v. Davis*, 254 Ark. 115, 491 S.W.2d 784 (1973).

## **SUBCHAPTER 12 — DELINQUENT IMPROVEMENT TAXES AND ASSESSMENTS IN COUNTIES WITH A POPULATION EXCEEDING 75,000**

### **SECTION.**

- 14-86-1201. Definitions.
- 14-86-1202. Applicability.
- 14-86-1203. Penalty — Damages.
- 14-86-1204. Time when taxes delinquent.
- 14-86-1205. Lists of delinquent realty.

### **SECTION.**

- 14-86-1206. Filing of lists.
- 14-86-1207. Redemption of land on delinquent list.
- 14-86-1208. Suit for collection of taxes.

**Effective Dates.** Acts 1925, No. 85, § 10: approved Feb. 16, 1925. Emergency clause provided: "This act being necessary for the preservation of the public peace, health and safety an emergency is hereby declared, and this act shall take effect and

be in force from and after its passage."

Acts 1937, No. 107, § 2: approved Feb. 17, 1937. Emergency clause provided: "This act shall take effect and be in force from and after its passage."

### **14-86-1201. Definitions.**

As used in this subchapter, unless the context otherwise requires:

- (1) "Real property" means all property assessed for the improvement within the district including lands, town lots, railroads, tramroads, bridges, and any and all other real property embraced in the district;
- (2) "Per tract" means each several and separate tract, piece, or parcel of real property listed upon the delinquent list furnished by the collector;

(3) "Collector" means any and all persons, by whatever official title known, or whether known by an official title or not, who shall have in his custody or possession the tax books for the purpose of collecting taxes as set out in § 14-86-1205.

**History.** Acts 1925, No. 85, § 7; A.S.A. 1947, § 20-1141.

### **14-86-1202. Applicability.**

(a)(1) The provisions of this subchapter shall apply only to those counties which have a population as shown by the last federal census in excess of seventy-five thousand (75,000) inhabitants.

(2)(A) The tax collecting officer of every improvement district as set out in this subchapter which embraces lands situated within a county having a population in excess of seventy-five thousand (75,000) inhabitants, but the principal office of which or the office of the tax collecting officer of which is located in a county not having a population in excess of seventy-five thousand (75,000) inhabitants, shall, within sixty (60) days and in the manner required in this subchapter of the tax collecting officers of districts the boundaries of which are located wholly within counties having a population in excess of seventy-five thousand (75,000) inhabitants, make and certify to the county tax collector of a county having a population in excess of seventy-five thousand (75,000) inhabitants lists showing the lands situated within the last named county the taxes payable upon which to the district shall have become delinquent.

(B) The last named collector shall be subject to the same fines and damages as set out in § 14-86-1203.

(b) The provisions of this subchapter shall not be applicable to improvement districts which embrace lands situated within three (3) or more counties.

**History.** Acts 1925, No. 85, § 8; 1937, No. 107, § 1; A.S.A. 1947, § 20-1142.

### **CASE NOTES**

#### **Limitation of Actions.**

Although the limitations of § 14-86-1208 would not apply to an improvement district, the identical provisions of § 14-86-1106 would. *Davidson v. Hartsfield*, 250 Ark. 1072, 468 S.W.2d 774 (1971).

### **14-86-1203. Penalty — Damages.**

(a)(1) Any collector of taxes as designated in § 14-86-1205 who shall fail or refuse to make, certify, and file with the county tax collector the delinquent lists named in this section, within the time provided in this subchapter, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in the sum of ten dollars (\$10.00).

(2) Each day intervening between the expiration of the time allowed the collector for filing the list and the actual filing of it shall constitute a separate offense and shall be punishable as provided in this section.

(b)(1) The district may recover of and from the collector or his bondsmen, or both, any amount of damages it may sustain by reason of the failure or refusal of the collector to comply with the provisions of this subchapter. However, in no event shall any such district recover an amount exceeding the total amount of the taxes so delinquent, together with its costs expended.

(2) Any court of competent jurisdiction in the county shall have jurisdiction to fix the damages, if any, sustained by any district as set out in this section.

**History.** Acts 1925, No. 85, § 3; A.S.A. 1947, § 20-1137.

#### **14-86-1204. Time when taxes delinquent.**

In case of any district, as set out in § 14-86-1205 where no time is fixed at which the taxes therein become delinquent, if not paid, they shall become delinquent at the expiration of ninety (90) days from the date they become due and payable.

**History.** Acts 1925, No. 85, § 2; A.S.A. 1947, § 20-1136.

#### **14-86-1205. Lists of delinquent realty.**

(a)(1) All taxes or assessments not delinquent but levied on the real property of this state in any road improvement district, fencing district, levee district, bridge district, drainage district, sewer district, street improvement district, sidewalk district, water district, light district, gas district, or any other district organized for the purpose of making any character of local improvements authorized by law, whether the district is situated within the corporate limits of a city or town, or otherwise, if not paid within the time provided for the payment thereof, shall be delinquent. The city collector, town collector, or any other person by whatever official title known, except the ex officio collector of the county where such property is situated, having in his custody or possession tax books for the purpose of collecting the taxes in any district, shall make out and file a list of all real property of the county becoming delinquent. This shall be done within sixty (60) days after any delinquency. This list shall be filed with the county tax collector of the county in which the property is situated, upon a form to be approved by the county tax collector.

(2) The ex officio collector of the county shall, in all respects, be subject to and shall comply with the provisions of this subchapter except that he shall file with the county tax collector the delinquent lists required by this subchapter within one hundred (100) days from the date the taxes become delinquent in his office.



(b) The list shall be preceded with a caption, which may be in substance, as follows:

"The lands, town lots, railroads, tramroads, bridges and other property returned delinquent in ..... (stating the corporate name of the district) ..... for the nonpayment of taxes due said district for the year 19.... with the tax chargeable thereon, are contained and described in the following list:"

(c) The list shall include:

- (1) The name of the supposed owner as it appears on the tax books;
- (2) A description of the property; and
- (3) The amount of tax due thereon.

(d)(1) On the list, the collector shall append his affidavit that it is true and correct.

(2) The affidavit shall also state the time the list became delinquent.

(e) The taxes shown delinquent by the list shall be designated as the delinquent taxes for the year in which they became payable.

(f) A separate list shall be made for each improvement district.

(g) On the margin of the lists, provisions shall be made for the extension of penalty and cost and for the redemption of the property.

**History.** Acts 1925, No. 85, § 1; A.S.A. 1947, § 20-1135.

### CASE NOTES

**Cited:** *Martin v. Board of Comm'rs*, 190 Ark. 747, 81 S.W.2d 414 (1935).

#### **14-86-1206. Filing of lists.**

(a) Upon the filing of any list as provided in § 14-86-1205, the county tax collector shall immediately add to the list the penalty and cost chargeable on each separate tract or parcel of ground, extending opposite thereof the total tax penalty and cost.

(b)(1) At the foot of the list, the collector shall append a certificate, duly signed, showing the time of the filing of the list.

(2) The certificate shall be taken as conclusive evidence that the list was filed as stated therein.

**History.** Acts 1925, No. 85, § 4; A.S.A. 1947, § 20-1138.

#### **14-86-1207. Redemption of land on delinquent list.**

(a) Anyone desiring to redeem any of the delinquent lands, town lots, railroads, tramroads, bridges, or other property included in the list shall apply to the county tax collector.

(b) Upon the payment of the tax penalty and cost, the collector shall issue a redemption certificate in triplicate, a copy of which shall be furnished to the board of commissioners of the district and a copy to be

retained by the collector, and he shall mark opposite the tract by whom redeemed and the date of the redemption.

(c) The collector shall immediately remit the amount of the tax and penalty so collected to the treasurer, or depository of the district, or other person authorized to receive it.

(d) For his services in filing the list and extending the tax, penalty, and cost thereon, and in issuing certificate of redemption, the collector shall be entitled to the sum of fifty cents (50¢) per tract, which shall be added at the time of the filing of the list and shall be charged as costs against the district and paid into the general revenue fund of the county, when collected, as other costs.

**History.** Acts 1925, No. 85, § 5; A.S.A. 1947, § 20-1139.

**A.C.R.C. Notes.** A proviso to this section provided that this section and § 14-86-1208 would apply to all property previously certified to the clerk of the chancery court pursuant to Act 534 of 1921 (§§ 14-86-1101, 14-86-1102, 14-86-1104—14-86-1106, 14-86-1208) and then remaining unredeemed.

### 14-86-1208. Suit for collection of taxes.

(a)(1) When the board of improvement or anyone authorized by law to file suit for the collection of these delinquent taxes desires to commence a suit, they shall obtain a certified copy of the remaining delinquent property on the list from the county tax collector, which shall be filed with the complaint, within ten (10) days thereafter, and taken as part thereof.

(2) The collector making the list shall be entitled to ten cents (10¢) per tract payable in advance, which shall be taxed as costs in the suit.

(b)(1) The chancery court of the county, by proper order entered in the case, may permit the collector to furnish the list to the board or may permit anyone authorized by law to file suit for the collection of the delinquent taxes, without requiring payment in advance.

(2) In this event, the collector's fees for making and certifying the list shall be taxed as costs in the case and become payable out of any fund collected from the delinquent property.

(c) No suit for the collection of the delinquent taxes shall be brought after three (3) years from the date the taxes become delinquent.

**History.** Acts 1925, No. 85, § 6; A.S.A. 1947, § 20-1140.

**Cross References.** Applicability of 1949 provisions, § 14-90-102.

**Publisher's Notes.** See "Publisher's Notes" to § 14-86-1207.

### CASE NOTES

#### Limitation of Actions.

Although the limitations of this section would not apply to an improvement dis-

trict, the identical provisions of § 14-86-1106 would. *Davidson v. Hartsfield*, 250 Ark. 1072, 468 S.W.2d 774 (1971).

### SUBCHAPTER 13 — DELINQUENT IMPROVEMENT TAXES AND ASSESSMENTS IN COUNTIES WITH A POPULATION EXCEEDING 150,000

**SECTION.**

14-86-1301. Applicability.

14-86-1302. Construction.

**SECTION.**

14-86-1303. Redemption of property.

14-86-1304. Fee for recording abolished.

**Effective Dates.** Acts 1941, No. 449, § 5: became law without Governor's signature, Apr. 3, 1941. Emergency clause provided: "It is hereby ascertained and hereby declared that due to the fact that delinquent assessments exist against many tracts and parcels of land in the State where the assessment amounts to less than the Chancery Clerk's costs for certificate of redemption, which unduly penalizes the owners of property and frequently results in their failure to pay assessments or effect redemption, thus depriving various improvement districts of funds necessary for maintenance of the improvement constructed by the districts, that the want of funds for maintaining paving of paving districts is a hazard to the traveling public and the want of funds for maintaining sanitary sewers of sewer districts is detrimental to the public health, therefore, the immediate opera-

tion of this act is essential for the protection of the public health and safety. An emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1975, No. 879, § 2: Apr. 4, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present laws of the State, it is the responsibility of certain County Collectors to collect delinquent taxes and assessments of improvement districts and that the sum allowed as a fee for such collection is wholly inadequate and is putting an unjust burden on the counties doing such collection. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### 14-86-1301. Applicability.

This subchapter shall only apply to counties having a population in excess of one hundred fifty thousand (150,000) inhabitants, according to the most recent federal census.

**History.** Acts 1941, No. 449, § 4;  
A.S.A. 1947, § 20-1134.

#### 14-86-1302. Construction.

The provisions of this subchapter shall not be construed to affect any other costs which may have been or may be assessed by the chancery court in an action filed therein for the collection of delinquent improvement district assessments.

**History.** Acts 1941, No. 449, § 3;  
A.S.A. 1947, § 20-1133.



**14-86-1303. Redemption of property.**

(a) Any person, firm, or corporation having an interest in any property which has been certified by the county tax collector's office prior to the enactment of this section for delinquent assessments in any improvement district and which property has not been sold for the delinquent assessments prior to the enactment of this section may pay the assessments or redeem the property within the time and in the manner provided by law. However, one (1) receipt or certificate of redemption shall be issued to the person, firm, or corporation embracing all of the property in the improvement district on which assessments are then paid or redemption then made by the person, firm, or corporation, regardless of the number of calls describing the property or the number of years of delinquency.

(b)(1) For the receipt or certificate of redemption, the collector shall be entitled to a fee equal to ten percent (10%) of the combined tax and penalty collected.

(2) On all delinquent improvement district property certified by the collector's office subsequent to the enactment of this section, the collector's cost for redemption shall be a fee equal to ten percent (10%) of the combined tax and penalty collected on each call or twenty-five cents (25¢) per call, whichever is greater.

**History.** Acts 1941, No. 449, § 2; 1975, No. 879, § 1; A.S.A. 1947, § 20-1132.

**CASE NOTES****Redemption Fee.**

This section is not the exaction of a tax but instead deals with a redemption fee; it is a method of statutory reimbursement to the collector for the additional expense which a landowner causes by failing to pay his assessment on time. *Keith v. Barrow-Hicks Extensions of Water Imp. Dist. No. 85, 275 Ark. 28, 626 S.W.2d 951 (1982).*

A common sense interpretation of this section dictates that the collection of the

delinquency fee be had from the delinquent landowner and not from the improvement district; it is clearly inequitable to require the other property owners in the districts who have paid their assessments on time to bear the costs of collecting from the delinquent owner, which is the result if the districts pay 10 percent of the combined assessment and penalty or fee to the collector. *Keith v. Barrow-Hicks Extensions of Water Imp. Dist. No. 85, 275 Ark. 28, 626 S.W.2d 951 (1982).*

**14-86-1304. Fee for recording abolished.**

The fee of the chancery clerk for filing and recording the delinquent lists of assessments of any improvement district certified to the chancery clerk's office by any person, board, or officer is abolished.

**History.** Acts 1941, No. 449, § 1; A.S.A. 1947, § 20-1131.

## SUBCHAPTER 14 — NOTICE TO SELL LAND FOR NONPAYMENT OF IMPROVEMENT DISTRICT ASSESSMENT

### SECTION.

14-86-1401. Purpose.

14-86-1402. Construction.

14-86-1403. Notice required.

### SECTION.

14-86-1404. Costs of notice.

14-86-1405. Sale of lands.

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**Cross References.** Applicability of 1949 provisions, § 14-90-102.  
Levee and improvement districts, taxes,

alternate procedure for extension, collection and payment, § 14-120-401 et seq.

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### 14-86-1401. Purpose.

The purpose of this subchapter is to ensure that owners of land receive notice of the filing of suit to sell lands for nonpayment of improvement district assessments, in those instances in which the law requires the filing of such a suit, and notice of the sale of lands for nonpayment of improvement district assessments, in those instances in which the law does not require the filing of suit before such a sale.

**History.** Acts 1979, No. 628, § 2;  
A.S.A. 1947, § 20-1157.

### 14-86-1402. Construction.

Nothing in this subchapter shall be construed to modify or limit the rights of landowners to redeem lands sold for nonpayment of improvement district assessments as previously provided by law.

**History.** Acts 1979, No. 628, § 2;  
A.S.A. 1947, § 20-1157.

### 14-86-1403. Notice required.

At least twenty (20) days prior to selling or filing suit to sell any lands for nonpayment of improvement district assessments, the person charged with making the sale or filing the suit shall mail, by certified mail, return receipt requested, to the owner of the lands at his last known address a notice:

- (1) Describing the delinquent lands;
- (2) Specifying the year of delinquency;
- (3) Stating the amount necessary for redemption; and
- (4) Advising the owner that he may redeem the lands at any time within twenty (20) days of the date the notice is mailed.

**History.** Acts 1979, No. 628, § 1;  
A.S.A. 1947, § 20-1156; Acts 1991, No. 92,  
§ 2.

**CASE NOTES****ANALYSIS**

Constitutionality.  
Rules of procedure.

**Constitutionality.**

Where notices were given the landowner, whose property was being sold to satisfy a lien created by his failure to pay an improvement district assessment, by publication and by mail as required by § 14-90-1408 and this section, respectively, the notice given the landowner

comported with due process. *Fulmer v. Board of Comm'rs*, 286 Ark. 419, 692 S.W.2d 246 (1985).

**Rules of Procedure.**

The notice provisions of ARCP 4 do not apply in an action by the board of commissioners to sell a landowner's property to satisfy a lien created by his failure to pay an improvement district assessment. *Fulmer v. Board of Comm'rs*, 286 Ark. 419, 692 S.W.2d 246 (1985).

**14-86-1404. Costs of notice.**

The costs of giving notice to owners shall be charged to the delinquent lands and collected either from the owners when the lands are redeemed or from the purchaser when the lands are sold.

**History.** Acts 1979, No. 628, § 3; A.S.A. 1947, § 20-1158.

**14-86-1405. Sale of lands.**

(a) If the lands are not redeemed within twenty (20) days after the notice is mailed, the person charged with making the sale or filing the suit may sell the lands or file suit to sell the lands.

(b) If the notice is mailed to the owner prior to filing suit to sell the lands, it shall not be necessary to mail a second notice to the owner prior to the sale of the lands.

**History.** Acts 1979, No. 628, § 1; A.S.A. 1947, § 20-1156. property to be sold for taxes, § 26-37-301 et seq.

**Cross References.** Redemption of real

## **SUBCHAPTER 15 — RIGHT OF REDEMPTION OF DELINQUENT LANDS SOLD IN IMPROVEMENT DISTRICTS**

**SECTION.**

14-86-1501. Right of purchaser to possession.

14-86-1502. [Repealed.]

**SECTION.**

14-86-1503. Time for redemption in certain districts.

**Cross References.** Applicability of 1949 provisions, § 14-90-102.

**Effective Dates.** Acts 1915, No. 43, § 2: approved Feb. 9, 1915. Emergency declared.

Acts 1925, No. 359, § 3: effective on passage.



## RESEARCH REFERENCES

**Ark. L. Rev.** A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

**14-86-1501. Right of purchaser to possession.**

(a) In all sales made by commissioners under decrees of chancery courts for foreclosure of delinquent special assessments in drainage, levee, and bridge districts, improvement districts in cities and towns, and in all special assessment districts of every kind, the court may approve the sale subject to the right of redemption.

(b) Immediately upon approval, the purchaser shall have the right to possession of the lands and premises so sold and may have process therefor.

(c) The purchaser, while so in possession, shall not be accountable for rents upon redemption. However, the purchaser shall not dispose of nor injure the timber nor minerals nor fixtures upon the property until the expiration of the right of redemption and shall not recover in case of redemption for improvements upon the property.

**History.** Acts 1915, No. 43, § 1; C. & M. Dig., §§ 5642, 5643; Pope's Dig., §§ 7329, 7330; A.S.A. 1947, § 20-1143.

## CASE NOTES

## ANALYSIS

In general.  
Quieting title.

**In General.**

This section was repealed by Acts 1933, No. 129, but the repealing act was held void. *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298 (1935).

**Quieting Title.**

While this section gives improvement district right of possession and right to ask for writ of assistance, where it has not done so and original owner has not relinquished possession, transferee of quit claim deed of district has no possession on which to base action to quiet title. *Calvert v. Haley*, 218 Ark. 752, 238 S.W.2d 664 (1951).

**14-86-1502. [Repealed.]**

**Publisher's Notes.** This section, concerning right of redemption generally, was repealed by Acts 1995, No. 801, § 2. The

section was derived from Acts 1915, No. 43, § 1; C. & M. Dig., § 5644; A.S.A. 1947, § 20-1144.

**14-86-1503. Time for redemption in certain districts.**

All persons shall have the right to redeem from the sale for taxes of road, drainage, levee, or other improvement districts at any time within two (2) years from the date when the lands are sold by the commissioner making the sale, and not thereafter.

**History.** Acts 1925, No. 359, § 2; Pope's Dig., § 13898; A.S.A. 1947, § 20-1145.

**Publisher's Notes.** A proviso to this section provided that this section would

not apply to property that was delinquent or forfeited prior to when it went into effect.

**CASE NOTES****ANALYSIS**

Constitutionality.

In general.

Applicability.

Bar of claims.

Payment of taxes.

**Constitutionality.**

Though when drainage district was formed statute fixed at five years the time within which property may be redeemed from delinquent tax sale, subsequent reduction by the legislature of the redemption period was held not a violation of the contract clause of the Constitution. *State Nat'l Bank v. Morthland*, 196 Ark. 346, 118 S.W.2d 266 (1938).

**In General.**

This section constitutes a reasonable extension of the time for redemption. *Harris v. Little Red River Levee Dist.*, 188 Ark. 975, 69 S.W.2d 877 (1934).

The legislature may enlarge the period of redemption or extend the time in which redemption may be effected at any time during the redemption period as fixed by a former statute where the sale has been to the improvement district and not to a private individual. *Hopkins v. Fields*, 202 Ark. 890, 154 S.W.2d 22 (1941).

**Applicability.**

This section has no applicability to sales for delinquent assessments in municipal improvement districts. *W.B. Worthen Co. v. Delinquent Lands*, 189 Ark. 723, 75 S.W.2d 62 (1934), rev'd on other grounds,

295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298 (1935).

This section does not apply to municipal districts since the phrase "or other improvement districts" has reference to other improvement districts of the same kind as those specifically enumerated. *Hopkins v. Fields*, 202 Ark. 890, 154 S.W.2d 22 (1941).

Bridge district, not a municipal improvement district, was of the class of improvement districts to which this section applies, and two years were, therefore, allowed from the date when lands were sold for nonpayment of the bridge assessments, in which to redeem. *Hopkins v. Fields*, 202 Ark. 890, 154 S.W.2d 22 (1941).

**Bar of Claims.**

Where the statutory bar was complete under this section, a subsequent amendment of § 18-61-101 did not revive the claim since the rights of the parties had become vested under the statute before amendment. *Davidson v. Hartsfield*, 250 Ark. 1072, 468 S.W.2d 774 (1971).

**Payment of Taxes.**

To redeem from drainage and levee taxes, a purchaser of the state's tax title must pay such improvement taxes accruing both before and after the state's tax title was acquired. *Harris v. Little Red River Levee Dist.*, 188 Ark. 975, 69 S.W.2d 877 (1934).

**Cited:** *Roberts v. Owen*, 183 Ark. 6, 34 S.W.2d 752 (1931).

## SUBCHAPTER 16 — ENFORCEMENT OF IMPROVEMENT DISTRICT TAX LIEN WHEN LAND FORFEITED TO STATE FOR GENERAL TAXES

## SECTION.

14-86-1601. Right of district to enforce.

14-86-1602. Redemption from state.

## SECTION.

14-86-1603. Rights of purchaser.

**Cross References.** Applicability of 1949 provisions, § 14-90-102.

**Effective Dates.** Acts 1939, No. 126, § 2: approved Feb. 24, 1939. Emergency clause provided: "It is ascertained and hereby declared that great quantities of land in improvement districts have been forfeited to the State and will be forfeited hereafter, and by reason of the inability of the local improvement districts to enforce the payment of their assessments or taxes while the title is in the State they are unable to perform their functions; drainage districts are unable to keep their

ditches clean, resulting in the spread of diseases; road districts are unable to keep their roads in repair; bridge districts are unable to maintain their bridges in safe condition; levee districts are unable to keep their levees in a condition to resist flood water, so that immediate operation of this act is essential to the public health and safety, and an emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1939, No. 329, § 5: effective on passage.

### RESEARCH REFERENCES

**Ark. L. Rev.** Memorandum Relative to Certain Aspects of Tax Title, 6 Ark. L. Rev. 167.

A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

### 14-86-1601. Right of district to enforce.

Where any lands have been forfeited or sold to the state for the nonpayment of general taxes and any of the lands may be located in any improvement district of any kind or class, the district may, nevertheless, proceed as provided by law to enforce its lien for delinquent taxes or assessments, subject to the paramount lien of the state, without waiting until the lands are redeemed from or sold by the state.

**History.** Acts 1939, No. 329, § 1; A.S.A. 1947, § 20-1146. prior delinquent tax sales, Acts 1939, No. 329, § 2.

**Publisher's Notes.** As to validation of

### CASE NOTES

## ANALYSIS

District taxes.  
Sale of lands.  
Superior title.

**District Taxes.**

The right of an improvement district to enforce collection of special assessments is suspended while the title to the land is

apparently in the state under a forfeiture for delinquent general taxes, and whether the sale to the state is valid or invalid is immaterial. *Davidson v. Crockett*, 200 Ark. 488, 140 S.W.2d 695 (1940).

Land sold to the state after confirmation of improvement district's purchase on foreclosure for previous taxes is not relieved of district taxes while owned by the



state; only the right of enforcement is suspended until return to private ownership. *Terry v. Drainage Dist.*, 206 Ark. 940, 178 S.W.2d 857 (1943).

#### **Sale of Lands.**

Where lands have forfeited for failure to pay betterments assessed them and there has been foreclosure and purchase by improvement district, public policy forbids a member of the board of commissioners to purchase such lands. *Mitchell v. Parker*, 201 Ark. 177, 143 S.W.2d 1114 (1940).

#### **Superior Title.**

This section is curative and retroactive, but while it confers the right on the improvement district tax purchaser to redeem from the state, it does not confer such right to redeem from one to whom the state has conveyed its title. *Watson v. Anderson*, 201 Ark. 809, 147 S.W.2d 28 (1941).

Purchaser of land from the state following forfeiture and sale for general taxes, prior to accrual of right of redemption under this section acquired superior title to that of purchaser from levee district following foreclosure of lien for levee taxes. *Watson v. Anderson*, 201 Ark. 809, 147 S.W.2d 28 (1941).

In suit by donee of land forfeited to the

state and thereafter sold to drainage district under decree foreclosing its tax lien, even if foreclosure sale to district was void because the title to the land was then in the state, grantee of district, who had also acquired the title of the original owner, had right to intervene and defend suit brought against his tenant. *Stow v. Burkes*, 202 Ark. 1147, 155 S.W.2d 568 (1941).

Where sale to levee district on foreclosure of the district's lien was confirmed more than a year before the state's tax lien attached, but issuance of deed was delayed awaiting the expiration of the two-year period of redemption, during this period the district was the owner of the equitable title and this ownership was sufficient to prevent the lien of the state from attaching; therefore land was not subject to sale to the state for state and county taxes, and deed from state was without validity. *Duncan v. Board of Dirs.*, 206 Ark. 1130, 178 S.W.2d 660 (1944).

Title derived from improvement district prevails over tax title from state where district institutes foreclosure proceedings prior to date on which tax lien is affixed. *Terry v. Starks*, 221 Ark. 870, 256 S.W.2d 545 (1953).

### **14-86-1602. Redemption from state.**

(a) Where any lands have been foreclosed on by any improvement district for delinquent taxes or assessments due it and the title to any of the lands may have been or is in the state, the purchaser at any sale for the improvement district taxes shall have the right to redeem the land from the state.

(b) In case a receiver shall be appointed by the chancery court for any such lands being foreclosed on by a district, the receiver may, out of the first moneys coming into his hands from rentals, or a sale thereof, redeem the lands from the state.

(c) The purchaser or receiver shall have a lien thereon for the sums so paid the state.

**History.** Acts 1939, No. 329, § 3; A.S.A. 1947, § 20-1147.

### 14-86-1603. Rights of purchaser.

Upon the expiration of the period allowed for redemption from foreclosure sales, the purchaser shall have the right to the possession of the lands without accountability for rents or damages until the state exercises its paramount authority.

**History.** Acts 1939, No. 126, § 1; A.S.A. 1947, § 20-1148.

**Publisher's Notes.** Acts 1939, No. 329, which was enacted at the same session of the General Assembly as this section is

deemed to have superseded the former first part of this section, as it covers the same subject matter. See §§ 14-86-1601, 14-86-1602.

### CASE NOTES

#### ANALYSIS

Applicability.  
Title to lands.

#### Applicability.

This section is not retroactive or curative in its provisions. *Davidson v. Crockett*, 200 Ark. 488, 140 S.W.2d 695 (1940).

#### Title to Lands.

Title to lands claimed by a drainage district by purchase at a foreclosure sale presented a question of law as to whether

commissioner's deeds to the district conveyed good title or whether the district's foreclosure for taxes and deeds were ineffective because of the sale of the land for delinquent state taxes. It was held that the question could only be settled by the decisions of the state court, and where such decisions had not fully settled the question, the federal district court ought not to have undertaken to decide the controversy over title to the land. *Johnson v. Drainage Dist.*, 126 F.2d 23 (8th Cir. 1942).

## SUBCHAPTER 17 — REFUND OF MONEY IN IMPROVEMENT DISTRICT LAND SALE FORFEITURE UPON FAILURE OF TITLE

#### SECTION.

14-86-1701. Refund if sale set aside.

14-86-1702. Amount of refund.

#### SECTION.

14-86-1703. Value of items removed.

### 14-86-1701. Refund if sale set aside.

All improvement districts in this state are directed to make refunds of amounts received by a district for the purchase of lands acquired by it by foreclosure of the district's lien for taxes, or assessments levied by it upon lands located therein, when the title shall fail and the sale by which the district has acquired the lands is cancelled and set aside by a court of competent jurisdiction.

**History.** Acts 1953, No. 38, § 1; A.S.A. 1947, § 20-1149.

**14-86-1702. Amount of refund.**

No refund shall be made under this subchapter except the amount in excess of the sum legally due the district at the time of the purchase.

**History.** Acts 1953, No. 38, § 2; A.S.A. 1947, § 20-1150.

**14-86-1703. Value of items removed.**

Any claimant for refund of purchase money shall be chargeable with the value of any timber, minerals, or other thing of value sold or removed from the land by the purchaser.

**History.** Acts 1953, No. 38, § 3; A.S.A. 1947, § 20-1151.

**SUBCHAPTER 18 — BOND OF DEPOSITORIES FOR IMPROVEMENT DISTRICTS**

## SECTION.

14-86-1801. Penalty.

14-86-1802. Deposit requirements.

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**Effective Dates.** Acts 1927, No. 182, § 3: effective on passage.

Acts 1979, No. 1001, § 3: Apr. 17, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current requirement that depositories furnish bond for the entire amount of improvement district funds on deposit is obsolete and unnecessary in that the Federal Deposit Insurance Cor-

poration insures a certain amount of said funds and that this Act is necessary to avoid duplicating the guaranty of the Federal Deposit Insurance Corporation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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**14-86-1801. Penalty.**

Any officer or commissioner of any improvement district of this state failing, refusing, or neglecting to comply with the provisions of this subchapter shall be deemed guilty of a misdemeanor and on conviction fined in any sum not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000).

**History.** Acts 1927, No. 182, § 2; A.S.A. 1947, § 20-1111.

**14-86-1802. Deposit requirements.**

(a)(1) All commissioners, treasurers, and other officers of all road, drainage, levee, bridge, street, sewer, paving, and all other improvement districts of this state, both rural and urban, having in their charge the moneys and funds of the districts, shall, before depositing them in any bank, trust company, savings association, or with any other person



or company, require of the depository a good and sufficient bond signed by some surety company authorized to do business in the State of Arkansas, conditioned for the apt and full and complete payment of all funds so deposited, together with interest thereon.

(2) The commissioners may decrease the amount of the bond by an amount not to exceed the amount of funds deposited which are fully insured by the Federal Deposit Insurance Corporation.

(b) The depository may, in lieu of the bond, deposit United States bonds or notes of the State of Arkansas, or the bonds of any legally organized school, levee, drainage, or other improvement district of the State of Arkansas, which bonds and all proceedings concerning the issuing of them have been approved as collateral security by some reputable attorney who is recognized by the bond buyers of the United States as such. The bonds shall be deposited in escrow with some bank other than the depository of the funds of the district to be delivered to the district only on failure of the depository of the funds to repay the funds to the district or to pay them on the order of the district.

(c) The premium for the bond may be paid out of the funds so deposited or may be paid by the depository, it being intended that it shall be discretionary with the commissioners of the district in the matter of the payment of the premiums on the bonds.

**History.** Acts 1927, No. 182, § 1; 1979, No. 1001, § 1; A.S.A. 1947, § 20-1110.

## CASE NOTES

### ANALYSIS

Construction.

Applicability.

Depository bonds.

Failure to comply.

Pledges by depositories.

### Construction.

This section should be strictly construed for the benefit of stockholders of the bank and the protection of depositors. *Arkansas-Louisiana Hwy. Imp. Dist. v. Taylor*, 177 Ark. 440, 6 S.W.2d 533 (1928); *Arkansas County Rd. Imp. Dist. v. Taylor*, 185 Ark. 293, 47 S.W.2d 27 (1932).

### Applicability.

This section has no applicability to school districts. *Merchants' & Planters' Bank v. McGehee Special School Dist.*, 179 Ark. 805, 18 S.W.2d 372 (1929). See also *Merchants' & Planters' Bank v. Hammock*, 178 Ark. 746, 12 S.W.2d 421 (1929).

### Depository Bonds.

Depository bonds given by bank to street improvement district are statutory

bonds. *American Bonding Co. v. Board of St. Imp. Dist.*, 187 Ark. 300, 59 S.W.2d 605 (1933).

Depository bonds must be construed like other contracts, and if it can do so, court must ascertain intention of parties; the court may examine not only the bond itself but also the statute and all facts connected with the making of the bond. *American Bonding Co. v. Board of St. Imp. Dist.*, 187 Ark. 300, 59 S.W.2d 605 (1933).

The statutory bond required of a depository covers all the moneys and funds of an improvement district which the depository has in its charge, including all funds deposited in the name of the district's collector. *American Bonding Co. v. Board of St. Imp. Dist.*, 187 Ark. 300, 59 S.W.2d 605 (1933).

### Failure to Comply.

Treasurer of levee district who had not complied with this section was not entitled to credit for a deposit lost in the failure of the bank. *Jefferson Bank v. Little Red River Levee Dist.*, 186 Ark. 1048, 57 S.W.2d 805 (1933).

**Pledges by Depositories.**

This section does not authorize depository banks to pledge their assets other than the bonds and notes of the state mentioned. Arkansas-Louisiana Hwy. Imp. Dist. v. Taylor, 177 Ark. 440, 6 S.W.2d 533 (1928).

Bank may not pledge its bills receivable

to secure deposits. Arkansas-Louisiana Hwy. Imp. Dist. v. Taylor, 177 Ark. 440, 6 S.W.2d 533 (1928).

This section does not authorize the pledge of school warrants. Arkansas County Rd. Imp. Dist. v. Taylor, 185 Ark. 293, 47 S.W.2d 27 (1932).

**SUBCHAPTER 19 — SURPLUS FUNDS IN IMPROVEMENT DISTRICTS**

## SECTION.

14-86-1901. Disposition of surplus required.

14-86-1902. Distribution of funds to counties.

## SECTION.

14-86-1903. Right to contest transfer.

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**Effective Dates.** Acts 1927, No. 122, § 5; Mar. 7, 1927.

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**14-86-1901. Disposition of surplus required.**

Wherever any excess or surplus remains in any special district in this state created for road improvement, levee, bridge, or drainage construction after the improvement has been completed and all costs and expenses thereof, including all principal and interest of bonds issued, have been paid and the excess or surplus is not needed for the special improvement or for the maintenance thereof; wherever the special improvement district has been abandoned and an excess or surplus remains therein after the payment of all legal and preliminary costs and expenses thereof; or wherever any special taxing funds exist for the payment of outstanding bonds or refunding bonds or other legal purposes and all expenses and costs of the special taxing fund, including the principal and interest of all outstanding bonds, have been paid or a sum sufficient to care for all outstanding bonds or interest outstanding has been created and collected through taxation, or otherwise, and remains in a sinking fund to meet the interest and bonds as they mature, and in addition thereto an excess or surplus remains in the special fund and is not needed nor required to meet the interest and outstanding bonds or other legal cost or expense of the special taxing fund, in each and all of the special districts or special taxing funds, the excess or surplus so remaining as indicated in this section shall, by appropriate court orders, be passed to and become a part of the general revenue funds of the counties where the special districts or special taxing funds exist.

**History.** Acts 1927, No. 122, § 1; A.S.A. 1947, § 20-1112.

**14-86-1902. Distribution of funds to counties.**

(a) Wherever any of the special districts or special taxing funds lie and exist wholly in one (1) county, then the county court shall have jurisdiction of the excess or surplus funds and may order them transferred to the general revenue fund of the county.

(b) Wherever the special taxing districts or special taxing funds lie in two (2) or more counties, then any chancellor in whose district any one (1) or more of the counties lie shall have jurisdiction of the excess or surplus so remaining and may, upon petition of any county judge or any taxpayer of any of the counties, order the excess and surplus so remaining to be paid and transferred to the treasurer of the respective counties in the proportion that the whole fund was contributed by the respective counties. The treasurers shall credit the funds so received to the general revenue funds of their respective counties.

**History.** Acts 1927, No. 122, § 2;  
A.S.A. 1947, § 20-1113.

**14-86-1903. Right to contest transfer.**

(a) Any citizen or taxpayer shall have the right to contest the transfer of the excess or surplus so remaining by showing that it, or a part thereof, may be required to meet the legal costs, expenses, interest, or bonds of the special district or special taxing funds.

(b) Any part of the surplus or excess so remaining that is shown to be needed or required for such legal purposes shall not be transferred from the special district or special taxing funds.

**History.** Acts 1927, No. 122, § 3; A.S.A. 1947, § 20-1114. prior transfers of surplus funds, see Acts 1927, No. 122, § 4.

**Publisher's Notes.** As to ratification of

**SUBCHAPTER 20 — AUDITS IN NONMUNICIPAL IMPROVEMENT DISTRICTS**

SECTION.

14-86-2001. Authority generally.

14-86-2002. Districts in different counties.

14-86-2003. Scope of examination.

14-86-2004. Reports of findings.

SECTION.

14-86-2005. Payment of expenses generally.

14-86-2006. Payment by county.

14-86-2007. Exception.

**14-86-2001. Authority generally.**

(a) Upon a petition signed by not less than twenty-five percent (25%) of the owners of real property in any road, bridge, or other improvement district in this state outside of any incorporated city or town, the county judge of the county in which the district lies is authorized and empowered, and is directed within sixty (60) days after the filing of the petition, to enter into a contract with the Department of Finance and Administration.



(b) The department is empowered to make such a contract with the county judge for auditing all books, accounts, and transactions of the commissioners of a district and, insofar as they pertain to the district, the accounts of the collectors or any other persons who have handled any of funds of the district.

(c) If the services of the department cannot be obtained, the county judge is authorized and directed to employ some other competent certified public accountant to make such an audit.

(d) An audit shall begin with the formation of the district or the close of the last previous audit, as the petitioners desire, and close with a date specified in the petition.

**History.** Acts 1923, No. 605, § 1.

#### **14-86-2002. Districts in different counties.**

In all cases where improvement districts may be composed of territory lying in two (2) or more counties, an audit shall be made upon an order of the county judge of each of the counties in which any portion of the territory of the district lies upon a petition signed by twenty-five percent (25%) of all owners of real property in the entire district.

**History.** Acts 1923, No. 605, § 4.

#### **14-86-2003. Scope of examination.**

(a)(1) The Director of the Department of Finance and Administration or any auditors appointed by him shall have power to make a thorough examination into the affairs of a district specified in § 14-86-2001 when called upon by the county judge.

(2)(A) The director shall have access to all records, books, accounts, papers, and documents concerning the district undergoing such an audit.

(B) The director is also authorized to:

(i) Examine, under oath, any officer, assistant, clerk, or other person touching the matters he may be authorized to inquire and examine; and

(ii) Summon and, by attachment, compel the attendance of any person to testify, under oath, before him in relation to the affairs of the district.

(b) The failure or refusal of any person to appear before the director or to deliver to him any books, records, or other documents shall subject the person to a fine of twenty-five dollars (\$25.00) for each day he refuses or fails to comply with the request.

**History.** Acts 1923, No. 605, § 2.

**14-86-2004. Reports of findings.**

(a) A full and complete report of the findings of an audit under this subchapter, together with a synopsis of the indebtedness of the district, shall be filed in the office of the Department of Finance and Administration.

(b)(1) A copy of the report of the findings of the audit shall be filed in the office of the county clerk of the county in which the audit is made and shall be there kept as a public document.

(2) If the district is composed of territory lying in two (2) or more counties, a copy of the report of the audit shall be filed in the office of the county clerk of all of the counties.

(c) A copy of the report of the findings of the audit shall also be delivered to the commissioners of the district.

**History.** Acts 1923, No. 605, § 3.

**14-86-2005. Payment of expenses generally.**

(a) An itemized statement of the cost of an audit under this subchapter for each district shall be presented by the county judge to the commissioners of the district for which any audit has been made.

(b) It is the duty of the commissioners to allow this claim and pay it in like manner as other expenses of the district are paid.

**History.** Acts 1923, No. 605, § 5.

**14-86-2006. Payment by county.**

In cases where an audit is ordered to be made in any district that has been abolished or in any district which has no funds with which to pay for the audit, the county judge may order such audits to be made at the expense of the county.

**History.** Acts 1923, No. 605, § 6.

**14-86-2007. Exception.**

This subchapter shall not apply to Sebastian County.

**History.** Acts 1923, No. 605, § 6.

**CHAPTER 87****REORGANIZATION OR CONSOLIDATION OF  
IMPROVEMENT DISTRICTS****SECTION.**

14-87-101. Purpose.

14-87-102. Definitions.

14-87-103. Jurisdiction over proceedings.

14-87-104. Records and transcripts.

**SECTION.**

14-87-105. Implementation and expenses.

14-87-106. Reorganization of districts.

14-87-107. Consolidation of districts.

## SECTION.

14-87-108. Refunding bonds of consolidated district.

14-87-109. Allocation and assumption of debt.

## SECTION.

14-87-110. Payment of overdue taxes.

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**Effective Dates.** Acts 1927, No. 162, § 10: approved Mar. 18, 1927. Emergency clause provided: "It being necessary, therefore for the preservation of the public

peace, health and safety, an emergency is declared and this act shall take effect and be in force from and after its passage."

### RESEARCH REFERENCES

**ALR.** Right of one governmental subdivision to challenge annexation proceed-

ings by another such subdivision. 17 ALR 5th 195.

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#### 14-87-101. Purpose.

This chapter is not intended to repeal or modify any existing law but to furnish other and better methods than those existing for refunding the indebtedness of any reorganizing improvement districts.

**History.** Acts 1927, No. 162, § 10; Pope's Dig., § 11331; A.S.A. 1947, § 20-1010.

#### 14-87-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Taxing district" means any road, drainage, levee, or other local improvement district in which proceedings for the refunding of the indebtedness or the reorganization of the district are instituted;

(2) "Subsidiary district" means any local improvement district whose indebtedness, or a part thereof, is assumed or absorbed by a taxing district;

(3) "Original district" means any local improvement district, all or a part of whose territory is embraced in a subsidiary district, or a part of whose indebtedness is being assumed by a taxing district.

**History.** Acts 1927, No. 162, § 1; Pope's Dig., § 11322; A.S.A. 1947, § 20-1001.

#### 14-87-103. Jurisdiction over proceedings.

(a) The proceedings prescribed by any special or general law for the refunding of any improvement district bonds or the reorganization of any improvement district may be begun and had in the chancery court of the proper county the same as in any county or circuit court provided by law under which the district was originally created.



(b) Chancery courts are given complete jurisdiction to hear and determine these matters.

**History.** Acts 1927, No. 162, § 7; Pope's Dig., § 11328; A.S.A. 1947, § 20-1007.

#### **14-87-104. Records and transcripts.**

(a) Where an improvement district is located in more than one (1) county, records of the proceedings shall be made in each of the counties whose lands are embraced in the district.

(b) Transcript of records imposing liens on any lands properly certified shall be recorded in the proper records of mortgage in the county where the land affected is located.

**History.** Acts 1927, No. 162, § 8; Pope's Dig., § 11329; A.S.A. 1947, § 20-1008.

#### **14-87-105. Implementation and expenses.**

(a) The court in which the proceedings prescribed in this chapter are had shall provide such facilities and instrumentalities for effecting the purposes of the district as may be deemed advisable.

(b) The necessary expenses shall be determined by the court and shall be borne by the taxing district involved.

**History.** Acts 1927, No. 162, § 9; Pope's Dig., § 11330; A.S.A. 1947, § 20-1009.

#### **14-87-106. Reorganization of districts.**

(a)(1) Proceedings instituted under any general or special law for refunding the indebtedness of any improvement district may include the reorganization of the governing body of the district.

(2) The reorganization shall be effected by the same court or board as is given the authority and jurisdiction under the law to provide for the refunding of the bonds of the district.

(b)(1) The membership of the governing body may be reduced or increased as may be deemed advisable.

(2)(A) Pending the election of any additional members, if the law creating the district prescribes that they be elected, additional members shall be appointed by the court or board where the proceedings are had and shall be made in compliance with the petition of the petitioners prosecuting the proceedings.

(B) It is mandatory upon any court or board to appoint the additional members named in any petition of fifty-one percent (51%) or more of the owners in assessed value of the real estate of the district.

(c) Any reorganized board shall have the same power, be given the same rights, have imposed upon it the same duties, and be selected in the same manner as was the old board.

(d) The reorganization of the district may include:

- (1) The change of the name of the district;
- (2) The method of collecting taxes;
- (3) The keeping of records;
- (4) The handling of funds of the district; and
- (5) The doing of anything that would not operate to impair the outstanding obligations of the district.

**History.** Acts 1927, No. 162, § 2;  
Pope's Dig., § 11323; A.S.A. 1947, § 20-1002.

#### **14-87-107. Consolidation of districts.**

(a) Where lands of a road, levee, drainage, or other local improvement district are included, in whole or in part, in another district whose indebtedness is being refunded, the first district may become a subsidiary district of the second or taxing district insofar as related to those lands of the first district which may be embraced or included in the second district.

(b) Consolidation may be effected at the same time, in the same manner, and in the same proceeding as is the refunding of the indebtedness of the taxing district.

**History.** Acts 1927, No. 162, § 3;  
Pope's Dig., § 11324; A.S.A. 1947, § 20-1003.

#### **14-87-108. Refunding bonds of consolidated district.**

(a) Where a subsidiary district is established as provided in § 14-87-107, the indebtedness of the subsidiary district may be refunded in the same manner as is provided for the refunding of the indebtedness of the taxing districts.

(b) The governing body of the taxing district may take up all or a part of the indebtedness of the subsidiary district, including such annual maturities of principal or interest as may be allotable to the lands of the subsidiary district included in the taxing district.

(c) In order to enable the taxing district to pay such indebtedness, it may issue and sell the refunding bonds or certificates of indebtedness either of the taxing or subsidiary district.

**History.** Acts 1927, No. 162, § 4;  
Pope's Dig., § 11325; A.S.A. 1947, § 20-1004.

**14-87-109. Allocation and assumption of debt.**

(a) Such part of the indebtedness, principal or interest, of the original district growing out of the cost of the local improvement as has been allocated, or may be allocable, to the lands of the subsidiary district, or may, from time to time, be so allocable to and chargeable against the lands of the subsidiary district in the way of special improvement taxes, may be assumed and paid by the taxing district from a fund produced by the sale of its bonds or certificates of indebtedness.

(b) In the assumption of the debts of the subsidiary district, the taxing district shall be subrogated with respect to liens, pledges, and such other provisions relating to securities for the debt assumed as belonged to the original district of which the subsidiary district was a part.

**History.** Acts 1927, No. 162, § 5; Pope's Dig., § 11326; A.S.A. 1947, § 20-1005.

**14-87-110. Payment of overdue taxes.**

(a) On such terms as is deemed advisable and as may meet the approval of the board or court before which the proceedings are had, the taxing district may assume and pay any overdue special improvement taxes of any lands embraced in the subsidiary district from the fund produced by the sale of certificates of indebtedness or of refunding bonds of the taxing district.

(b) The taxes so paid, including penalties, cost of redemption, or any other necessary cost incurred, must be allocated to each tract of land properly chargeable with it, and proper proceedings must be had by which the taxing district may be given sufficient lien or may become subrogated to all rights of existing lienors or pledgees to the end that the taxing district may have a first lien on the lands whose obligation it has assumed for all special taxes paid by it.

**History.** Acts 1927, No. 162, § 6; Pope's Dig., § 11327; A.S.A. 1947, § 20-1006.

**CHAPTER 88****MUNICIPAL IMPROVEMENT DISTRICTS GENERALLY****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. CREATION OF DISTRICTS.
3. BOARDS OF IMPROVEMENT.
4. OFFICERS SERVING DISTRICTS.
5. AFFAIRS OF DISTRICTS.
6. DISSOLUTION OF DISTRICTS.



RESEARCH REFERENCES

**Am. Jur.** 3 **Am. Jur.** 2d, **Adv. Poss.**, **C.J.S.** 87 **C.J.S.**, **Towns.**, § 36.  
§ 270.

CASE NOTES

**In General.**

The municipal improvement district statutes were not repealed or abrogated by § 14-235-201 et seq., the sewer revenue bond statute, since the statutes do not cover the same field and are not repugnant. *Ray v. City of Mt. Home*, 228 Ark. 885, 311 S.W.2d 163 (1958).

Improvement districts are agents of the state and derive their limited powers and

duties of a public and governmental nature by legislative delegation through the taxing power of the state, and constitute a separate and distinct species of taxing districts as contradistinguished from counties, municipal corporations and school districts. *Quapaw Cent. Bus. Imp. Dist. v. Bond-Kinman, Inc.*, 315 Ark. 703, 870 S.W.2d 390 (1994).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-88-101. Enforcing duty to perform.

**14-88-101. Enforcing duty to perform.**

Any duty required to be performed by this act may, at any time, be enforced by mandamus at the suit of any person or board interested in it.

**History.** Acts 1881, No. 84, § 26, p. 161; C. & M. Dig., § 5742; Pope's Dig., § 7383; A.S.A. 1947, § 20-131.

**Publisher's Notes.** As to applicability of statutory provisions pertaining to municipal improvement districts before and since July 1, 1952, see §§ 14-90-102, 14-90-103.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-

305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

SUBCHAPTER 2 — CREATION OF DISTRICTS

SECTION.

14-88-201. Applicability.  
14-88-202. Purposes for which created.  
14-88-203. Petition and notice.  
14-88-204. Who may sign petition.  
14-88-205. Apportionment of assessed value for signers.  
14-88-206. New district to replace void district.  
14-88-207. Hearing and establishment.  
14-88-208. Denial on planning commis-

SECTION.

sion recommendation.  
14-88-209. Compensation for preliminary work.  
14-88-210. Corporate powers.  
14-88-211. Existing road improvement districts.  
14-88-212. Districts to install electric streetlights in cities of more than 10,000 inhabitants.

**Cross References.** Levy of tax and issuance of bonds for preliminary expenses, § 14-86-701 et seq.

**Preambles.** Acts 1929, No. 26 contained a preamble which read: "Whereas, There are improvement districts in cities and towns in this State, organized on petition of what was supposed to be a majority of the property owners of the district, and which have made or begun this improvement for which they were organized, but whose organization was void, and the majority of whose owners desire to pay the honest debt incurred by the district for the improvement which they enjoy; and

"Whereas, the same is likely to occur in the future...."

**Effective Dates.** Acts 1913, No. 125, § 9: approved Mar. 3, 1913. Emergency clause declared.

Acts 1923 (1st. Ex. Sess.), No. 20, § 3: approved Oct. 13, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1935, No. 145, § 8: approved Mar. 20, 1935. Emergency clause provided: "It is ascertained and hereby declared that by reason of the fact that heretofore it has been necessary to obtain the consent of only a bare majority in value of the owners of real property in order to organize a local improvement district, the organization of such districts all over the State of Arkansas has been in the past greatly abused, advantage has been taken of the owners of

property therein and burdensome taxes have been laid upon property owners without any actual increase in property values as compensation therefor, many of such districts having been organized for promotion purposes; that many property owners throughout the State are in danger of losing their said property by reason of their inability to pay the said local improvement taxes; and that unless legislation is immediately enacted making it necessary to obtain the consent of more than a majority in value of said property owners the practice of organizing such districts and the abuse thereof will be continued, all to the serious detriment and injury of owners of property. It is, therefore, found and declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1938 (Ex. Sess.), No. 22, § 2: approved Apr. 1, 1938. Emergency clause provided: "It is hereby ascertained and declared that the passage of this act is essential in the making of public improvements throughout the State of Arkansas by which grade crossings may be eliminated and the overflow of public highways may be prevented, and highways may be made safer in other ways and that therefore there is an urgent need that this act go into immediate operation, and that its immediate operation is essential to the public safety. An emergency is therefore declared, and it is hereby provided that it shall take effect and be in force immediately upon its passage."

Acts 1941, No. 310, § 3: approved Mar. 26, 1941. Emergency clause provided: "It is hereby ascertained and declared that the passage of this act is essential in the making of public improvements throughout the State of Arkansas by which grade crossings may be eliminated and the overflow of public highways may be prevented, and highways may be made safer in other ways and that therefore there is an urgent need that this Act go into immediate operation, and that its immediate operation is essential to the public safety. An emergency is therefore declared, and it is hereby provided that it shall take effect and be in force immediately upon its passage."

Acts 1967, No. 163, § 7: Feb. 28, 1967. Emergency clause provided: "It has been found and determined by the General As-

sembly that in many cities and towns in the State of Arkansas the streets and highways are subject to heavy traffic by motor vehicles, that on account of parking motor vehicles in the streets and the lack of facilities for off-street parking of motor vehicles, vehicular traffic in the said streets and highways is made dangerous to drivers and to pedestrians, and that on account thereof the streets and highways are made hazardous to the property and lives of the residents of the State of Arkansas; that it is necessary in order to protect the property and lives of the residents of the State of Arkansas to provide adequate facilities for the off-street parking of motor vehicles and that only by the passage of this Act and giving it immediate effect can the lives and property of the residents of the State of Arkansas be protected. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1968 (2nd Ex. Sess.), No. 4, § 3: May 29, 1968. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that numerous local improvements, to be effected by municipal improvement districts

in this State, will be in need of maintenance and repair and that only by the immediate operation of this Act may this necessary maintenance and repair be carried out. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 290, § 7: Mar. 21, 1969. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws governing the organization of municipal improvement districts previously required the petition of a majority in value of the property owners in the affected territory, that this requirement was later increased to two-thirds in value, and that the requirements of existing laws obstruct the organization of many municipal improvement districts which would otherwise be organized for the construction or acquisition of improvements essential to the health and welfare of the inhabitants of this State. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

### 14-88-201. Applicability.

(a) The provisions of § 14-88-202 shall extend to any municipal improvement district formed or created.

(b) The formation and creation of these districts is authorized, in whole or in part, outside of any city of the first or second class or incorporated town.

**History.** Acts 1941, No. 310, § 1A; A.S.A. 1947, § 20-102.

**Publisher's Notes.** As to applicability of statutory provisions pertaining to municipal improvement districts before and since July 1, 1952, see §§ 14-90-102, 14-90-103.

A proviso to this section provided for the extension of municipal improvement districts to include certain Works Progress Administration (W.P.A.) projects.

### CASE NOTES

#### ANALYSIS

"Any improvement district."  
Outside city limits.

#### "Any Improvement District."

In action challenging validity of sewer improvement district on ground that district embraced lands lying within and



outside city, fact that emergency clause of this section permitting establishment of districts outside of city limits mentioned only necessity of improvement of grade crossing did not mean that other items in the statute were omitted or had been deleted; therefore words "any improvement district" apply to sewer districts, and establishment of sewer improvement districts was valid. *Smart v. Gates*, 234 Ark. 858, 355 S.W.2d 184 (1962).

not prohibited by the Arkansas Constitution and the Constitution requires only that assessments be ad valorem, uniform, and with consent of a majority in value of the affected property holders, the legislature could authorize municipality to tax lands lying outside city limits by assessment of benefits on the lands in sewer improvement district. *Smart v. Gates*, 234 Ark. 858, 355 S.W.2d 184 (1962).

### **Outside City Limits.**

As legislature is vested with all powers

## **14-88-202. Purposes for which created.**

The council of any city of the first or second class or any incorporated town may assess all real property within the city or town, or within any district thereof, for the purpose of opening, grading, or otherwise improving streets and alleys, including viaducts and underpasses either within the boundaries of an improvement district, or beyond the boundaries and beyond the limits of the city or town if the property in the district will be benefited thereby, including the acquisition of rights-of-way by purchase or the exercise of the power of eminent domain as provided in § 14-91-104 and the payment of damages for the taking or injuring of property resulting from the making of any such improvement, if the work or construction is done or paid for by the federal government, or any of its agencies, or by the State of Arkansas or any other public body, or to pay for any local improvement of a public nature, including sewer systems, theretofore made, by which the property within the district has benefited; for the purpose of paying the principal of and interest on any bonds at any time authorized and issued by any such district pursuant to and in the manner and for the purposes specified in this section; for the purpose of buying existing sewer systems, or the construction of sewers, or constructing facilities for the off-street parking of vehicles, or constructing sidewalks, sidewalk overhead covers, benches, recreational areas, and other facilities pertaining to the construction, maintenance, and utilization thereof; for the purpose of the making of any other local improvement of a public nature in the manner set forth in this subchapter; and for the purpose of maintaining, repairing, and operating any such improvements.

**History.** Acts 1881, No. 84, § 1, p. 161; 1889, No. 18, § 1, p. 17; C. & M. Dig., § 5647; Acts 1927, No. 68, § 1; Pope's Dig., § 7279; Acts 1938 (Ex. Sess.), No. 22, § 1; 1941, No. 310, § 1; 1967, No. 163, § 1; 1968 (2nd Ex. Sess.), No. 4, § 1; A.S.A. 1947, § 20-101.

## **CASE NOTES**

### **ANALYSIS**

Constitutionality.

### **Assessments.**

—In general.

—Improvements allowed.

—Improvements not allowed.  
Improvement districts.  
Remedies.

### **Constitutionality.**

This section giving the city council authority to assess for local improvements is constitutional. *City of Little Rock v. Board of Imp.*, 42 Ark. 152 (1883).

### **Assessments.**

#### **—In General.**

Special assessments for local improvements can be made only on account of peculiar benefits which the improvements bestow upon the property assessed. *Rector v. Board of Imp.*, 50 Ark. 116, 6 S.W. 519 (1887); *Kirst v. Street Imp. Dist. No. 120*, 86 Ark. 1, 109 S.W. 526 (1908); *Board of Imp. v. Pollard*, 98 Ark. 543, 136 S.W. 957 (1911).

The theory upon which improvement district taxes are sustained is that the proposed improvements will enhance the value of the land sought to be taxed, and the tax is imposed upon this enhanced value, called betterment. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

#### **—Improvements Allowed.**

Property may be assessed to construct waterworks or electric light plants. *Crane v. City of Siloam Springs*, 67 Ark. 30, 55 S.W. 955 (1899); *Wilson v. Blanks*, 95 Ark. 496, 130 S.W. 517 (1910); *Bank of Commerce v. Huddleston*, 172 Ark. 999, 291 S.W. 422 (1927).

Property may be assessed to construct a city park. *Matthews v. Kimball*, 70 Ark. 451, 66 S.W. 651 (1902).

Property may be assessed to construct a city wharf. *Solomon v. Wharf Imp. Dist.*, 145 Ark. 126, 223 S.W. 385 (1920).

An ordinance creating a paving district, providing for repairing a certain street and for drainage when necessary "and all other work necessary and incidental to said paving and drainage" did not authorize any work not necessary and incident to the main purpose of repaving and was not uncertain. *Kempner v. Sanders*, 155 Ark. 321, 244 S.W. 356 (1922).

Betterments for sewerage purposes may be assessed against vacant property

where, if and when desired, the sewerage connections may be made. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

#### **—Improvements Not Allowed.**

A municipal corporation was without power to organize an improvement district in a city for the purpose of opening, establishing, and creating an alley through property when no alley had ever been opened, dedicated, or provided for. *Lewis v. Rieff*, 114 Ark. 366, 169 S.W. 1184 (1914). (Decision prior to 1927 amendment.)

Property may not be assessed to construct an auditorium. *Lipscomb v. Lenon*, 169 Ark. 610, 276 S.W. 367 (1925); *Board of Imp. v. Moore*, 171 Ark. 839, 286 S.W. 964 (1926).

### **Improvement Districts.**

The entire city may be included in an improvement district. *Crane v. City of Siloam Springs*, 67 Ark. 30, 55 S.W. 955 (1899); *Matthews v. Kimball*, 70 Ark. 451, 66 S.W. 651 (1902); *Wilson v. Blanks*, 95 Ark. 496, 130 S.W. 517 (1910); *Bank of Commerce v. Huddleston*, 172 Ark. 999, 291 S.W. 422 (1927).

One district may be created to make two different kinds of improvements. *Wilson v. Blanks*, 95 Ark. 496, 130 S.W. 517 (1910); *Bateman v. Board of Comm'rs*, 102 Ark. 306, 143 S.W. 1062 (1912).

Two distinct districts, coterminous in extent, may be organized, one for grading and paving and the other for curbing, guttering, and storm sewerage the same streets. *Bottrell v. Hollipeter*, 135 Ark. 315, 204 S.W. 843 (1918).

### **Remedies.**

The remedy of landowners for the taking, appropriation, or damage to private property for use of the public would be an action at law; but where the complaint alleges that a sewer system as maintained by the defendants constitutes a nuisance and the answer denies such allegation, the issue is properly triable in equity. *Sewerage Dist. No. 1 v. Black*, 141 Ark. 550, 217 S.W. 813 (1920).

**Cited:** *McDonnell v. Improvement Dist. No. 145*, 97 Ark. 334, 133 S.W. 1126 (1911).

14-88-203. Petition and notice.

(a)(1) When persons claiming to be a majority in value, as shown by the last county assessment of the owners of real property, in the whole or any part, of any city or incorporated town, file with the city or town clerk or recorder a petition for the organization of an improvement district for any purposes authorized by § 14-88-202, it shall be the duty of the city or town clerk or recorder to give notice that the petition will be heard at a meeting of the governing body of the city or town named in the notice, which will be held more than fifteen (15) days after the filing of the petition.

(2) The notice shall be published once a week for two (2) weeks, the last insertion to be not less than seven (7) days before the date fixed for the hearing.

(b) The mayor, if he sees fit, may call a special meeting of the governing body for the purpose of hearing the petition. The called meeting shall be held not less than fifteen (15) days after the date of the call, and the notice of the hearing thereat shall be published for the time and in the manner prescribed in subdivision (a)(2) of this section.

(c) The notice may be in the following form:

“All owners of real property within the following described territory ..... (here describe the territory to be included in the district) ..... in the City (or Town) of ....., are hereby notified that a petition has been filed with the City Clerk (or Town Recorder) of the said City (or Town) of ....., purporting to be signed by a majority in value of the owners of real property within said territory, which petition prays that a local improvement district be formed embracing said territory for the purpose of ..... (here describe purpose and name of the streets to be improved, if any) ....., and that the cost thereof be assessed and charged upon the real property above described. All owners of real property within said territory are advised that said petition will be heard at the meeting of the (governing body) to be held at the hour of .... p.m., on the ..... day of ....., 19...., and that at said meeting said (governing body) will determine whether those signing the same constitute a majority in value of such owners of real property; and at said meeting all owners of real property within said territory who desire will be heard upon the question.

.....  
City Clerk (or Town Recorder)”

(d) The petition may limit the cost of the improvement either to a fixed sum or to a percentage of the assessed value of the real property in the district.

**History.** Acts 1929, No. 64, § 2; 1935, No. 145, § 1; Pope’s Dig., § 7281; Acts 1967, No. 163, § 2; 1969, No. 290, § 1; A.S.A. 1947, § 20-104.

**Publisher’s Notes.** Notice provisions are required on every petition for the

establishment of improvement districts of whatever nature. See § 14-86-201.

Acts 1929, No. 64, § 19, provided that this section did not apply in any case where a first petition had been filed for the organization of a district under the stat-



utes existing at the time of passage of this section.

## CASE NOTES

### ANALYSIS

In general.

Notice.

Petitions.

—In general.

—Content.

—Descriptions.

—Form.

—Majority in value.

### In General.

The petition, the notice, and the ordinance relative to an improvement district must be in harmony. *American State Bank v. Street Imp. Dist.*, 197 Ark. 986, 125 S.W.2d 796 (1939).

### Notice.

The giving of the notice of hearing was jurisdictional. *Voss v. Reyburn*, 104 Ark. 298, 148 S.W. 510 (1912); *Pope v. City of Nashville*, 131 Ark. 429, 199 S.W. 101 (1917); *Bennett v. Kelley*, 179 Ark. 530, 16 S.W.2d 992 (1929) (decisions under prior law).

A notice of hearing on a petition signed by the mayor and attested by the city clerk was sufficient. *Selz v. Paving Dist. No. 1*, 173 Ark. 245, 292 S.W. 133 (1927) (decision under prior law).

A suit contesting the validity of the organization and assessment of benefits in a municipal improvement district was too late where the suit had not been brought within 30 days after the ordinance creating the district and after the publication of the assessment. *Yates v. Phillips*, 180 Ark. 709, 22 S.W.2d 559 (1929) (decision under prior law).

In absence of publication in substantial compliance with statutory requirements, a town council is powerless to proceed with formation of street improvement district. *American State Bank v. Street Imp. Dist.*, 197 Ark. 986, 125 S.W.2d 796 (1939).

Omission of seven words in the description of property in the published notice of hearing for the creation of an improvement district was not sufficiently material to invalidate the notice. *Linder v. Street Imp. Dist. No. 9*, 224 Ark. 457, 274 S.W.2d 470 (1955).

### Petitions.

#### —In General.

A city council had jurisdiction to lay off a street improvement district only as designated by the property owners in the first petition, and the council must have conformed strictly to the authority conferred upon it. *Smith v. Improvement Dist. No. 14*, 108 Ark. 141, 156 S.W. 455 (1913) (decision under prior law).

Names may have been removed from petition for fraud, deceit, misrepresentation, and duress, but not for a change of opinion as to how burdensome the improvement might have been. *Echols v. Trice*, 130 Ark. 97, 196 S.W. 801 (1917); *Pope v. City of Nashville*, 131 Ark. 429, 199 S.W. 101 (1917); *Lipscomb v. Blanz*, 163 Ark. 1, 258 S.W. 624 (1924) (decisions under prior law).

The petition for the formation of an improvement district is jurisdictional, and the discretion of the board of commissioners is limited to carrying out the purposes of the petition. *Ahern v. Paving Imp. Dist.*, 181 Ark. 1020, 29 S.W.2d 265 (1930) (decision under prior law).

#### —Content.

The extent and character of an improvement as expressed in the municipal ordinance must substantially have complied with the petition of the property owners upon which it was based. *Kraft v. Smothers*, 103 Ark. 269, 146 S.W. 505 (1912) (decision under prior law).

In construing a petition filed by property owners asking that the improvement be made, it was held that the petitioners meant the same as a request for the assessment of the improvement against the real property in the district, although such a request was not made in so many words. *Mustin v. Brain*, 135 Ark. 98, 204 S.W. 621 (1918) (decision under prior law).

#### —Descriptions.

The petition may describe the character of the improvement only in general terms, or expressly leave with the commissioners the decision as to what kind of materials should be used. *McDonnell v. Improve-*

ment Dist. No. 145, 97 Ark. 334, 133 S.W. 1126 (1911) (decision under prior law).

Petitions should accurately describe the territory. *Bell v. Phillips*, 116 Ark. 167, 172 S.W. 864 (1915); *Henry v. Board of Imp.*, 170 Ark. 673, 280 S.W. 987 (1926) (decisions under prior law).

The petition for the formation of an improvement district would be insufficient where it does not contain any description of the boundaries of the proposed district and where it cannot be ascertained from the petition what territory is included in the proposed district. *Bell v. Phillips*, 116 Ark. 167, 172 S.W. 864 (1915) (decision under prior law).

The map or plans and specification or estimate of costs must have been regarded as part of the petition for organization of a road district for the purpose of determining whether a proposed improvement was certainly and definitely described. *Tarvin v. Road Imp. Dist.*, 137 Ark. 354, 209 S.W. 81 (1919) (decision under prior law).

A petition for the organization of an improvement district in a city or town need have stated the nature of the improvement only in general terms, and therefore a petition describing the improvement as macadamizing, grading, graveling, paving, curbing, or guttering the streets mentioned was sufficient. *Baird v. Street Paving Imp. Dist.*, 148 Ark. 246, 229 S.W. 712 (1921) (decision under prior law).

The preliminary petition for a street paving district sufficiently described the improvement as "repaving with asphaltic surface and otherwise improving the street", the words "and otherwise improving" referring to such work as was incident and essential to making the repavement a successful and complete improvement, it being enough to describe the improvement in general terms while leaving the details and plans to be worked out by the board of improvement after the district was established. *Kempner v. Sanders*, 155 Ark. 321, 244 S.W. 356 (1922) (decision under prior law).

One who signed a petition for the improvement of certain streets had no right to rely upon the assurance of the city council that an adjoining street, not described in the petition, would also be improved. *Ahern v. Paving Imp. Dist.*, 181 Ark. 1020, 29 S.W.2d 265 (1930) (decision under prior law).

By specifying in the petition for a paving district the kind of material and manner of paving, the property owners may have restricted the powers of the commissioners. *Thacker v. Paving Imp. Dist.*, 182 Ark. 368, 31 S.W.2d 758 (1930) (decision under prior law).

Where ordinance was in the language of the petition and erroneous description in one of two publications extended the proposed improvement one block, but boundaries of the district for betterment assessments were not affected, there was no ground for invalidation of street improvement district. *American State Bank v. Street Imp. Dist.*, 197 Ark. 986, 125 S.W.2d 796 (1939).

#### —Form.

No particular form of the petition is prescribed, and in determining whether the property owners' petition is valid, the court will look to the petition, not to find a formal prayer, but to ascertain whether the effect of the petition is to express the consent of the majority of the property owners. *Mustin v. Brain*, 135 Ark. 98, 204 S.W. 621 (1918) (decision under prior law).

#### —Majority in Value.

The power of the city council to make an assessment upon real property depends upon the assent of a majority in value of the property holders owning property adjoining the locality to be affected; this fact is jurisdictional, and the want of it makes a local assessment by a city council void. *Rector v. Board of Imp.*, 50 Ark. 116, 6 S.W. 519 (1887) (decision under prior law).

A complaint was insufficient in failing to allege that the signatures procured by fraud were sufficiently numerous to reduce the number of the remainder of the signers to less than a majority. *Boles v. Kelley*, 90 Ark. 29, 117 S.W. 1073 (1909) (decision under prior law).

A special improvement district within a city declared on direct attack to be void ab initio for failure of a majority of the taxpayers to sign the petition for the improvement was held not to be a de facto district, and all obligations entered into by it were nullities. *Davis v. Lawson*, 168 Ark. 1143, 272 S.W. 646 (1925) (decision under prior law).

In a suit by taxpayers attacking the validity of the organization of an improvement district where the record had shown



the filing of the first and second petitions and a finding of the city council that the second petition contained a majority in value of the taxpayers of the district, in the absence of a contrary showing, it would have been presumed that the district was legally established. *Williams v. Sewer Imp. Dist.*, 180 Ark. 510, 22 S.W.2d 405 (1929) (decision under prior law).

Taxpayers were precluded from questioning the correctness of a finding of the city council that a majority in value of the owners of real property in the district had signed the petition for the improvement, where the suit was not brought within 30 days of the finding. *Williams v. Sewer Imp. Dist.*, 180 Ark. 510, 22 S.W.2d 405 (1929) (decision under prior law).

Property owners alleging that petition for organization of improvement district was not signed by required majority of property owners have burden to show that fact, and finding of council that it was signed by required majority is *prima facie* correct. *High v. Bailey*, 203 Ark. 461, 157 S.W.2d 203 (1941).

Where consent for establishment of district was secured by petition signed by owners of two-thirds (now majority) in

value of realty within district, no election was necessary to obtain consent to be taxed for such purpose. *Ray v. City of Mt. Home*, 228 Ark. 885, 311 S.W.2d 163 (1958) (decision prior to 1969 amendment).

The question whether there is a majority of signers is not determined as of the time the petition was signed, but is determined as of the time the city's governing body acts upon the petition. *Appleby Rd. St. Imp. Dist. v. Powell*, 282 Ark. 398, 669 S.W.2d 3 (1984).

Where, at the time the board acted in the matter, the landowners' petition for the formation of a street improvement district no longer contained the signatures of the owners of a majority in value of the assessed property in the district, two of the original signers having conveyed their property to others by deeds that were of record, the ordinance creating the district was invalid. *Appleby Rd. St. Imp. Dist. v. Powell*, 282 Ark. 398, 669 S.W.2d 3 (1984).

**Cited:** *Ray v. City of Mt. Home*, 228 Ark. 885, 311 S.W.2d 163 (1958); *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

## 14-88-204. Who may sign petition.

Women, married or single, may sign the petition; guardians may sign for their wards; and executors or administrators may sign for the estates represented by them.

**History.** Acts 1881, No. 84, § 16, p. 161; C. & M. Dig., § 5653; Pope's Dig., § 7287; A.S.A. 1947, § 20-105.

## CASE NOTES

### ANALYSIS

Designating numbers.  
Persons authorized to sign.  
Persons not authorized to sign.

### Designating Numbers.

Where a municipal improvement district was created as District No. 7 to cure infirmities in which another was created to be known as No. 8 and having for its purpose the same object in view as that of District No. 7 covering practically the same territory, but excluding certain city lots that should not have been included in No. 7 and including some that should not

have been excluded from No. 7, it became immaterial by which number it was known since one district cured the infirmities of the other, and although given separate numbers it cannot be said that there are two districts having for their objects and purposes the making of the same improvements. *Christian v. Forrest City St. Imp. Dist.*, 196 Ark. 523, 118 S.W.2d 868 (1938).

### Persons Authorized to Sign.

A guardian may sign a petition for a local improvement. *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917).



One partner may sign for partnership property. *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917).

A mortgagor may sign even after foreclosure, if time to redeem has not expired. *Holt v. Ring*, 177 Ark. 762, 9 S.W.2d 43 (1928).

#### **Persons Not Authorized to Sign.**

This section authorizing administrators to sign for estates cannot, so far as the heirs are concerned, give their signatures any efficacy in the face of constitutional provisions requiring the consent of owners. *Rector v. Board of Imp.*, 50 Ark. 116, 6 S.W. 519 (1887).

An administrator is not competent to sign a petition for improvement so as to bind the heirs, and there is no distinction between the power of an administrator and an executor, even where the executor is clothed with a power of sale. *Ahern v. Board of Imp. Dist.*, 69 Ark. 68, 61 S.W. 575 (1901).

A widow who is life tenant of dower or homestead lands cannot sign a petition for a local improvement. *Colquitt v. Stevens*, 111 Ark. 314, 163 S.W. 1141 (1914).

### **14-88-205. Apportionment of assessed value for signers.**

(a) If the boundaries of a local improvement district as petitioned for embrace a part of any lot, block, or parcel of land which, upon the county assessment books, is assessed as a whole, any signer of the petition may demand, in writing, of the county assessor that he shall apportion the assessment for state and county purposes upon the lot, block, or parcel of land so as to show the assessed value of that portion which is within the proposed district and the assessed value of the remainder which is without the district.

(b) It shall be the duty of the county assessor, within ten (10) days after the request is made of him, to make the reassessment and to deliver to the city or town clerk or recorder a certificate showing the assessed value of that portion of the lot, block, or parcel of land that is within the district, to the end that in determining whether a majority in value has signed the petition, the city or town council can compute the value of the portion of the lot, block, or parcel of land that is within the district.

**History.** Acts 1929, No. 64, § 21; Pope's Dig., § 7286; A.S.A. 1947, § 20-106.

### **14-88-206. New district to replace void district.**

When a void improvement district in a city or town has done or shall do the whole or any part of its work of improvement, a new district may be organized under the provisions of this subchapter or under any laws which may be passed for the organization of local improvement districts in cities and towns, for the purpose of paying for the improvement made or commenced by the void district.

**History.** Acts 1929, No. 26, § 1; Pope's Dig., § 7280; A.S.A. 1947, § 20-133.

**Cross References.** Proceedings to cor-

rect errors or irregularities in formation of district, § 14-86-401 et seq.

**14-88-207. Hearing and establishment.**

(a)(1) At the time named in the notice, the municipal governing body shall meet and hear all owners of real property within the proposed district who desire to be heard on the question as to whether a majority in assessed value of the property owners has signed the petition and shall make a finding as to whether the petition is signed by a majority in assessed value of the property owners.

(2)(A) The finding of the governing body shall be expressed in an ordinance.

(B)(i) If it finds that a majority has signed the petition, it shall then be the duty of the governing body, by the same ordinance, to establish the district.

(ii)(a) The ordinance shall designate the boundaries of the district and the object of the proposed improvement as described in the petition.

(b) The ordinance shall also give the district a name descriptive of the nature of the proposed improvement and a number to prevent its being confused with other similar districts.

(b)(1) The ordinance shall be published within thirty (30) days after its adoption for one (1) insertion, in some newspaper published in the city or town where the district lies, or if there is no such newspaper, then in some newspaper published in the county.

(2)(A) Where improvement districts are organized in any city or town in which no newspaper is regularly published, all notices required may be published in any newspaper that is published and has a bona fide circulation in the county.

(B) If there is no newspaper published in the county where the city or town lies, the ordinances and notices provided for in the cases of local improvement districts in cities and towns may be published by posting them in at least ten (10) conspicuous places in the city or town where the improvement is to be made.

(c) The findings of the governing body shall be conclusive unless attacked by a suit in the chancery court of the county, brought within thirty (30) days after the publication.

(d) The governing body and the chancery court in their finding shall be governed by the record of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument. They shall also be governed by the value placed upon the property as shown by the last county assessment on file in the county clerk's office.

(e) If any petition is not acted on by the governing body within one (1) year from the date of its filing, it shall become void unless there is pending in the court an injunction suit which prevents such action or a mandamus suit to compel action by the governing body. In any event, the petition shall become void unless acted on within two (2) years from the date of its filing.

§ 2; A.S.A. 1947, §§ 20-108, 20-110, 20-111.

## RESEARCH REFERENCES

**UALR L.J.** Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

## CASE NOTES

### ANALYSIS

Assessments.

Findings of governing bodies.

Majority in assessed value.

Ordinances establishing districts.

Publication of ordinances and notices.

Review.

Time to act.

### Assessments.

The city council is governed by the last county assessment and should not consider property omitted therefrom. *Improvement Dist. No. 1 v. St. Louis S.W. Ry.*, 99 Ark. 508, 139 S.W. 308 (1911) (decision under prior law).

Former similar statute was valid as fixing the method of procedure in determining the value of real property in the proposed improvement district. *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927) (decision under prior law).

The value of a lot assessed as a whole, which was divided, part being within and part without the improvement district, could not have been considered. *Holt v. Ring*, 177 Ark. 762, 9 S.W.2d 43 (1928) (decision under prior law).

Church property was subject to assessment. *Bensberg v. Parker*, 192 Ark. 908, 95 S.W.2d 892 (1936) (decision under prior law).

### Findings of Governing Bodies.

The determination of the municipal council as to the singleness of the improvement and the selection of the property to be benefited is conclusive, except for fraud or demonstrable mistake. *Cooper v. Hogan*, 163 Ark. 312, 260 S.W. 25 (1924); *Brown v. Board of Comm'rs*, 165 Ark. 585, 265 S.W. 81 (1924); *Carnahan v. City of Fayetteville*, 175 Ark. 405, 1 S.W.2d 10 (1927) (decisions under prior law).

The finding of a city council that a petition for an improvement contains a

majority in value of the real property owners of the district is prima facie correct. *Dunbar v. Street Imp. Dist.*, 172 Ark. 656, 290 S.W. 372 (1927) (decision under prior law).

### Majority in Assessed Value.

Consent of required majority in value is necessary. *Watkins v. Griffith*, 59 Ark. 344, 27 S.W. 234 (1894); *Craig v. Board of Imp.*, 84 Ark. 390, 105 S.W. 867 (1907); *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927) (decisions under prior law).

The fact that the requisite number of property owners consent to the formation of an improvement district is jurisdictional and without such consent all proceedings therefor are void. *Improvement Dist. No. 1 v. St. Louis S.W. Ry.*, 99 Ark. 508, 139 S.W. 308 (1911) (decision under prior law).

In determining whether the requisite majority had been obtained by those who petition for the establishment of an improvement for the purchase of an electric lighting plant, the value of real property of railroad companies within the district had to be considered. *Walton v. Commissioners of Light Imp. Dist.*, 144 Ark. 249, 222 S.W. 1056 (1920) (decision under prior law).

A landowner signing a petition for the establishment of a municipal improvement district was entitled to have the lands to which he had deeds on record at the time the council passed on the petition counted in determining whether the required majority of landowners in the district had signed for the improvement. *Smith v. Callahan*, 175 Ark. 974, 1 S.W.2d 82 (1928) (decision under prior law).

The question whether there is a majority of signers is not determined as of the time the petition was signed, but is determined as of the time the city's governing body acts upon the petition. *Appleby Rd. St. Imp. Dist. v. Powell*, 282 Ark. 398, 669 S.W.2d 3 (1984).



Where, at the time the board acted in the matter, the landowners' petition for the formation of a street improvement district no longer contained the signatures of the owners of a majority in value of the assessed property in the district, two of the original signers having conveyed their property to others by deeds that were of record, the ordinance creating the district was invalid. *Appleby Rd. St. Imp. Dist. v. Powell*, 282 Ark. 398, 669 S.W.2d 3 (1984).

### **Ordinances Establishing Districts.**

The extent and character of the improvement, as expressed in the ordinance, must substantially comply with the petition. *Kraft v. Smothers*, 103 Ark. 269, 146 S.W. 505 (1912) (decision under prior law).

The descriptions in the ordinance must conform to those in the petition. *Smith v. Imp. Dist. No. 14*, 108 Ark. 141, 156 S.W. 455 (1913); *Riddle v. Ballew*, 130 Ark. 161, 197 S.W. 27 (1917) (decisions under prior law).

Variance between description in ordinance as passed and published ordinance is material. *McRaven v. Clancy*, 115 Ark. 163, 171 S.W. 88 (1914) (decision under prior law).

Journal of municipal council showing passage of ordinance cannot be impeached by parol evidence. *Roberts v. Street Imp. Dist.*, 156 Ark. 248, 245 S.W. 489 (1922); *Lewis v. Forrest City Special Imp. Dist.*, 156 Ark. 356, 246 S.W. 867 (1922) (decisions under prior law).

The adoption of an ordinance or resolution by unanimous vote of the municipal council dispenses with the rule requiring it to be read on three different days, unless two-thirds of the council vote to dispense with the rule. *Young v. Gurdon*, 169 Ark. 399, 275 S.W. 890 (1925); *El Dorado v. Jacobs*, 174 Ark. 98, 294 S.W. 411 (1927) (decisions under prior law).

The validity of a municipal ordinance may be collaterally attacked where the ordinance is void for lack of power to enforce it. *Board of Imp. v. Moore*, 171 Ark. 839, 286 S.W. 964 (1926) (decision under prior law).

### **Publication of Ordinances and Notices.**

Ordinances are void if not published within a required time. *Crane v. City of Siloam Springs*, 67 Ark. 30, 55 S.W. 955 (1899); *Bennett v. Kelley*, 179 Ark. 530, 16

S.W.2d 992 (1929) (decisions under prior law).

Ordinances of a city creating an improvement district and providing for assessments, to be valid, must be published in some newspaper published in the city or town in which the district is organized. *Gibson v. Hoxie*, 110 Ark. 544, 162 S.W. 568 (1913) (decision under prior law).

Subdivision (b)(2)(A) governs the publication of an ordinance levying assessments for an improvement already constructed. *Boas v. Coates*, 114 Ark. 23, 169 S.W. 312 (1914).

### **Review.**

In the organization of an improvement district, it was held that the findings of the chancellor as to the assessment of benefits upon a person's land would not have been disturbed on appeal. *Burrus v. Board of Sewer Imp. Dist. No. 1*, 134 Ark. 10, 203 S.W. 20 (1918) (decision under prior law).

Where the city council, in proceedings to establish an improvement district, found that a majority in value of the property owners in the district had signed the petition for the district and no review of such finding was sought within 30 days thereafter, the council's finding became conclusive on the courts and the chancery court was without jurisdiction to hear and determine a suit to enjoin the improvement on the ground that a majority in value had not signed the petition. *Wigley v. House*, 179 Ark. 503, 16 S.W.2d 588 (1929) (decision under prior law).

City council in making finding that requisite two thirds (now majority) in assessed value of property owners had signed the petition for a street improvement district would necessarily have to find the total assessed value in the district, so that finding of council was conclusive, where finding was not attacked by suit in chancery within 30 days of publication of ordinance. *Street Imp. Dist. No. 1 v. Cooper*, 215 Ark. 760, 233 S.W.2d 607 (1949) (decision prior to 1969 amendment).

Mandamus is not a proper method to review a city's decision regarding the creation of an improvement district because this section provides for an adequate remedy by way of an appeal to chancery court. *Powell v. Bishop*, 279 Ark. 365, 652 S.W.2d 9 (1983).

**Time to Act.**

This section, which provides that a petition for the creation of a municipal improvement district shall become void unless it has been acted upon within two years from the date of its filing, does not apply to annexation of territory to a mu-

nicipal improvement district. *Hazen v. City of Booneville*, 260 Ark. 871, 545 S.W.2d 614 (1977).

**Cited:** *McAllister v. Forrest City St. Imp. Dist.*, No. 11, 274 Ark. 372, 626 S.W.2d 194 (1981); *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

**14-88-208. Denial on planning commission recommendation.**

In any case where the organizers of an improvement district within any town or city have secured signatures for more than fifty percent (50%) in value of owners of real property within the proposed district petitioning for the organization of an improvement district, where it appears from a recommendation of the city planning commission that the proposed special improvement does not harmonize with the city plan, or that the proposed project would not contribute to public safety and convenience, or to the service and safety of vehicle and pedestrian traffic, and the planning commission recommends denial of the petition, then the city council may properly deny the organization, although the petition contains more than fifty percent (50%) of the signatures of the owners in value of real property within the district.

**History.** Acts 1931, No. 275, § 1; Pope's Dig., § 10027; A.S.A. 1947, § 20-107.

**Cross References.** Approval of planning commission required, § 14-56-412.

CASE NOTES

**Cited:** *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

**14-88-209. Compensation for preliminary work.**

Commissioners of municipal improvement district boards are authorized to pay a reasonable compensation to the persons who have done necessary preliminary work in the organization of them.

**History.** Acts 1913, No. 125, § 6; C. & M. Dig., § 5741; Pope's Dig., § 7382; A.S.A. 1947, § 20-112.

CASE NOTES

ANALYSIS

Enforcement.  
Preliminary expenses.

**Enforcement.**

Where the legal right of an attorney to have a voucher issued for legal services rendered to an improvement district has been determined by the commissioners of the district, such right will be enforced in

a mandamus proceeding. *Huie v. Barkman*, 179 Ark. 772, 18 S.W.2d 334 (1929).

**Preliminary Expenses.**

The services of a promoter in circulating a petition and creating sentiment for organization of a district is not a "preliminary expense." *Martin v. Street Imp. Dist.*, 167 Ark. 108, 266 S.W. 941 (1924).

**14-88-210. Corporate powers.**

Municipal improvement districts shall be bodies corporate and shall have power to sue and be sued and to contract by the corporate name.

**History.** Acts 1929, No. 64, § 3; 1935, No. 145, § 2; Pope's Dig., § 7282; Acts 1969, No. 290, § 2; A.S.A. 1947, § 20-108.

**RESEARCH REFERENCES**

**UALR L.J.** Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

**CASE NOTES****Tort Liability.**

Even though this section allows a natural gas improvement district to sue and be sued, there is still an immunity from tort

liability for gas explosions. *Reeme v. Natural Gas Imp. Dist. No. 2*, 247 Ark. 983, 448 S.W.2d 647 (1970).

**14-88-211. Existing road improvement districts.**

No road improvement district within the state shall, in any way, affect the validity of any municipal improvement district which is organized for the purpose of paving any streets over which any road improvement district may pass.

**History.** Acts 1923 (1st Ex. Sess.), No. 20, § 1; A.S.A. 1947, § 20-135.

existing districts, see Acts 1923 (1st Ex. Sess.), No. 20, § 2.

**Publisher's Notes.** As to validation of

**CASE NOTES****Purpose.**

This section suspended or withdrew the authority of rural road districts over streets which are subjects of municipal improvement districts, validated the lat-

ter districts, and was effective retroactively. *Moore v. North College Ave. Imp. Dist.*, 161 Ark. 323, 256 S.W. 70 (1923); *Paving Dists. Nos. 2 & 3 v. Baker*, 171 Ark. 692, 286 S.W. 945 (1926).

**14-88-212. Districts to install electric streetlights in cities of more than 10,000 inhabitants.**

(a) Local improvement districts may be organized in cities having more than ten thousand (10,000) inhabitants according to the federal census under the provisions of this chapter for the purpose of installing electric streetlights within the district and of supplying the lights with electric current.

(b) The commissioners of the district are authorized to purchase, construct, and install the necessary columns, fixtures, wiring, conduits, and other appliances and to maintain them.

(c) Districts may make contracts with municipalities, companies, or individuals supplying electricity for furnishing the necessary electric current during a period not exceeding twenty-five (25) years.



(d) The district shall not cease to exist when the work is completed, and the improvement shall not be turned over to the city, but the district shall be operated by the commissioners thereof, to the end that the electric columns, wiring, fixtures, conduits, and other appliances may be kept in good condition and the electric current paid for out of the local assessments upon the property benefited.

**History.** Acts 1929, No. 207, § 1;  
A.S.A. 1947, § 20-103.

### SUBCHAPTER 3 — BOARDS OF IMPROVEMENT

#### SECTION.

- 14-88-301. Appointment of commissioners.
- 14-88-302. Oath of office.
- 14-88-303. Vacancies generally.
- 14-88-304. Petition of property owners to fill vacancy.
- 14-88-305. Removal of member.
- 14-88-306. Chairman.

#### SECTION.

- 14-88-307. Quorum.
- 14-88-308. No compensation.
- 14-88-309. Interest in contracts unlawful — Penalty.
- 14-88-310. Interest in loans unlawful — Penalty.
- 14-88-311. Combining boards.

**Cross References.** Publication of annual report, § 1-3-105.

**Preambles.** Acts 1941, No. 74 contained a preamble which read: "Whereas, in many instances vacancies occur on the boards of commissioners of improvement districts by reason of one of the commissioners dying or moving out of the State; and

"Whereas, in many such instances said vacancies are not promptly filled by appointment of new members to the board of commissioners, when the law governing the creation of such districts contemplates a full board of three commissioners, and it is to the best interest of the property holders in looking after the affairs of said district that a full board of three commissioners be always maintained;

"Now, therefore..."

**Effective Dates.** Acts 1893, No. 158, § 3: effective on passage.

Acts 1899, No. 94, § 2: effective on passage.

Acts 1909, No. 80, § 6: effective on passage.

Acts 1909, No. 81, § 3: effective on passage.

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present

laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1935, No. 145, § 8: approved Mar. 20, 1935. Emergency clause provided: "It is ascertained and hereby declared that by reason of the fact that heretofore it has been necessary to obtain the consent of only a bare majority in value of the owners of real property in order to organize a local improvement district, the organization of such districts all over the State of Arkansas has been in the past greatly abused, advantage has been taken of the owners of property therein and burdensome taxes have been laid upon property owners without any actual increase in property values as compensation therefor, many of such districts having been organized for promotion purposes; that many property owners throughout the State are in dan-

ger of losing their said property by reason of their inability to pay the said local improvement taxes; and that unless legislation is immediately enacted making it necessary to obtain the consent of more than a majority in value of said property owners the practice of organizing such districts and the abuse thereof will be continued, all to the serious detriment and injury of owners of property. It is, therefore, found and declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1941, No. 7, § 2: approved Jan. 30, 1941. Emergency clause provided: "That it is hereby stated, ascertained and found that because of the language of section 7283 of Pope's Digest there is now uncertainty in the law as to whether the Mayor and City Commissioners in Cities operating under a commission form of government pursuant to Act 13 of the Acts of 1913, as amended, are the Commissioners of Improvement Districts formed in such cities, and that such uncertainty is preventing, hindering and delaying the making of many improvements of a public nature, and that, therefore, this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1941, No. 74, § 2: became law without Governor's signature, Feb. 18, 1941. Emergency clause provided: "As the

improvement made by districts created by town or city council, are organized for the purpose of making improvements such as sidewalks, street paving, sanitary and storm sewers, water lines to supply the inhabitants with water, etc., which improvements are for the health and safety of the people residing in the district, it is ascertained and hereby declared that unless such districts maintain a full board of three commissioners that the repairs and maintenance of the improvements may not be carried on in such a way as to safeguard the health and safety of the public, it is therefore, hereby declared that an emergency exists and that for the preservation of the public peace, health, and safety, this act shall immediately take effect upon its passage."

Acts 1961, No. 70, § 3: Feb. 9, 1961. Emergency clause provided: "In order to secure efficiency and economy in the operation of municipal improvement districts and to promote the health and comfort of the residents and property owners of said districts, there is a need for the authorization granted by this Act, and, therefore, an emergency is declared, and this Act, being necessary for the preservation of the public peace, health and safety shall take effect and be in force upon its passage and approval."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

### 14-88-301. Appointment of commissioners.

(a)(1) In the ordinance creating a municipal improvement district, the city or town council shall appoint three (3) owners of real property therein as commissioners, who shall compose a board of improvement for the district.

(2) In cities operating under a commission form of government, as amended, the mayor and city commissioners, by virtue of their offices, shall be commissioners of each improvement district and shall compose the board of improvement of each district.

(b) The ordinance may be in the following form:

"AN ORDINANCE ESTABLISHING ..... IMPROVEMENT DISTRICT NO. ....

"WHEREAS, parties claiming to be the owners of two-thirds in assessed value of the property located within the territory hereinafter described have filed a petition praying that an improvement district be established for the purpose hereinafter set out.

"WHEREAS, after due notice as required by law, the City (or Town) Council of the City (or Town) of ..... has heard all parties desiring to be heard, and has ascertained that said petition was signed by two-thirds in assessed value of the owners of real property within said territory;

"NOW, THEREFORE, BE IT ORDAINED by the City (or Town) Council of the City (or Town) of .....

"Section 1. There is hereby established an improvement district embracing the following property ..... (here describe territory) ..... for the purpose of ..... (here describe the purpose) .....

"Said district shall be known as ..... Improvement District No. ....; and .....

..... and ..... are hereby named commissioners, who shall compose the Board of Improvement for said district.

"Section 2. This ordinance shall take effect and be in force from and after its passage."

**History.** Acts 1929, No. 64, § 4; 1935, No. 145, § 3; Pope's Dig., § 7283; Acts 1941, No. 7, § 1; A.S.A. 1947, § 20-109.

**Cross References.** Board of commissioners in cities having city administrator form of government, § 14-48-131.

### CASE NOTES

#### ANALYSIS

Commissioners.  
Initiative and referendum.

#### Commissioners.

Mayor and alderman were ineligible as commissioners, but if appointed, they were commissioners de facto, and their appointment did not impair the validity of the improvement district. *Anderson v. Pixley*, 132 Ark. 539, 201 S.W. 796 (1918) (decision under prior law).

Where one commissioner was not a property owner in improvement district, but the other two were, all proceedings where all three were present were valid, since a majority may act; also no attack on validity because commissioner was not a property owner in district could be made after 30 days. *Gannaway v. Street Imp. Dist.*, 164 Ark. 407, 262 S.W. 22 (1924) (decision under prior law).

Where city council creates an improvement district board and appoints three real property-owning commissioners to serve thereon as required by this section and where the board has not yet formed a plan or ascertained the cost of the improvement as required, the question of the correctness of the assessments or the method employed cannot be brought before the courts. *Ketcher v. Mayor of N. Little Rock*, 2 Ark. App. 315, 621 S.W.2d 12 (1981).

#### Initiative and Referendum.

The initiative and referendum amendment did not apply to an improvement district ordinance. *Hodges v. Board of Imp.*, 117 Ark. 266, 174 S.W. 542 (1915); *Paving Dist. No. 36 v. Little*, 170 Ark. 1160, 282 S.W. 971 (1926) (decisions under prior law).

**Cited:** *Linder v. Street Imp. Dist. No. 9*, 224 Ark. 457, 274 S.W.2d 470 (1955).

### 14-88-302. Oath of office.

(a) Each member of the board of improvement, within ten (10) days after his appointment, shall take the oath of office required by Arkansas Constitution, Article 19, § 20, and an oath that he will not, either directly or indirectly, be interested in any contract made by the board.



(b) The oaths of office of the commissioners of municipal improvement districts may be taken before any officer authorized to administer oaths.

(c) The oath required under this section shall be filed in the office of the city or town clerk.

(d) If any member of the board shall fail to take this oath and to file it in the office of the clerk within the time allowed in this section, he shall be taken to have declined the office. The city or town council shall at once appoint another person, having the like qualifications, in his place, who shall take and file his oath of office within ten (10) days after his appointment.

**History.** Acts 1881, No. 84, § 3, p. 161; No. 64, § 20; Pope's Dig., §§ 7353-7355; C. & M. Dig., §§ 5714, 5715; Acts 1929, A.S.A. 1947, §§ 20-113 — 20-115.

### CASE NOTES

#### ANALYSIS

Failure to take oath.  
Filing of oaths.

#### Failure to Take Oath.

This section is mandatory, and failure of a member of the board to take the oath within the time required amounts to a declination of the office, imposing on city council the duty to select another in his place. *Hickey v. Hargraves*, 194 Ark. 64, 105 S.W.2d 88 (1937).

Member's failure to take oath within required time prevents him from acquiring any right or title to the office, and he cannot be treated as a de facto officer in a direct attack to review city council's proceedings in declaring vacancy and making appointment. *Hickey v. Hargraves*, 194 Ark. 64, 105 S.W.2d 88 (1937).

#### Filing of Oaths.

Effect of failure by a commissioner of improvement district to file his oath of

office is to invest the city council with power to appoint a successor, the presumption being that the commissioner has declined to serve. *Jones v. Leighton*, 200 Ark. 1015, 142 S.W.2d 505 (1940).

That oath of office of commissioner of street improvement district was found in a desk at the city hall created a presumption it was filed, but not a presumption that the filing occurred within 10 days from its execution. *Jones v. Leighton*, 200 Ark. 1015, 142 S.W.2d 505 (1940).

Nunc pro tunc resolution adopted by city council after commissioners of street improvement district had been serving almost 10 months, stating they had been appointed, created presumption that it would not have been passed if the commissioners had failed to file their oaths of office, and resolution adopted 10 years later declaring the position vacant for failure to file the oath was held properly set aside on certiorari. *Jones v. Leighton*, 200 Ark. 1015, 142 S.W.2d 505 (1940).

### 14-88-303. Vacancies generally.

(a) All vacancies that may occur after a municipal board shall have been organized shall be filled by the city or town council.

(b) If all places on the board shall become vacant, or those appointed shall refuse or neglect to act, new members shall be appointed by the council, as in the first instance.

**History.** Acts 1881, No. 84, § 3, p. 161; § 5716; Pope's Dig., § 7356; Acts 1961, 1909, No. 81, § 1, p. 224; C. & M. Dig., No. 70, §§ 1, 2; A.S.A. 1947, § 20-116.

**14-88-304. Petition of property owners to fill vacancy.**

(a) When there is a vacancy on the board of commissioners of any improvement district due to the death of a commissioner or due to the fact that a commissioner has ceased to reside in the state where such a district was created by any town or city council, and in such case, if five (5) or more property owners of the district petition the city or town council, calling attention to the vacancy on the board of commissioners and requesting the appointment of a new commissioner to fill the vacancy, it shall be the duty of the council to take forthwith the necessary steps to fill the vacancy by appointment of a new commissioner, who shall be a property owner in the district.

(b) Upon the filing of a petition with the council signed by five (5) or more property owners in the district affected, reciting that any commissioner is no longer a property owner in the district, accompanied by a corroborative certificate of an abstractor, the person shall automatically cease to be a commissioner. His office is declared to be vacant from the date of filing the petition, and the council that created the district shall forthwith name as commissioner of the district to fill the vacancy the person named in the petition and recommended for commissioner of the district if the person is a property owner in the district.

**History.** Acts 1941, No. 74, § 1; A.S.A. 1947, § 20-117.

**14-88-305. Removal of member.**

(a)(1) The city or town council shall have the power to remove a municipal board of improvement, or any member thereof by a two-thirds ( $\frac{2}{3}$ ) vote of the whole number of aldermen elected to the council.

(2)(A) Removal shall be for cause only, and after a hearing upon sworn charges preferred in writing by some real property owner in the district.

(B) Ten (10) days' notice of the hearing of the charges shall be given.

(b) The council shall have the power to remove the board, or any member thereof, by a vote of a majority of the whole number of aldermen elected to the city council, upon the written petition of the owners of a majority in assessed value of the property located within the district, after a hearing upon ten (10) days' notice to each member of the board affected.

**History.** Acts 1881, No. 84, § 3, p. 161; § 5716; Pope's Dig., § 7356; Acts 1961, 1909, No. 81, § 1, p. 224; C. & M. Dig., No. 70, §§ 1, 2; A.S.A. 1947, § 20-116.

**CASE NOTES****ANALYSIS**

Cause for removal.

Power to remove.  
Proceedings for removal.  
Review.

### **Cause for Removal.**

"Cause" or "sufficient cause" shall mean "legal cause" and not any cause which the municipal council may think sufficient; the cause must be one which specially relates to and affects the administration of the office and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. *Carswell v. Hammock*, 127 Ark. 110, 191 S.W. 935 (1917).

A petition to remove the commissioners of a street improvement district which charged them with incompetency, gross negligence, willful neglect of duties, waste of funds, and failure to file an annual settlement with vouchers was held to state a cause for removal. *Boullioun v. City of Little Rock*, 176 Ark. 489, 3 S.W.2d 334 (1928).

City councilman was held not entitled to hold the office of a commissioner of street improvement district because the offices are incompatible. *Tappan v. Helena Fed. Sav. & Loan Ass'n*, 193 Ark. 1023, 104 S.W.2d 458 (1937).

Where record of proceedings before city council was silent as to on which charge water commissioner was guilty and as to what evidence order of city council for removal was based, court properly quashed order of removal of commissioner, as commissioner is entitled to know on what specific charge he was removed and the evidence upon which council based its order of removal. *Martin v. Cogbill*, 214 Ark. 818, 218 S.W.2d 94 (1949).

Court would not substitute its judgment for that of city board as to whether "cause" was sufficient for removal of commission-

ers. *Martin v. Quinn*, 294 Ark. 60, 740 S.W.2d 627 (1987).

### **Power to Remove.**

City council has authority to remove a commissioner of an improvement district upon a showing sufficient to justify action. *Martin v. Cogbill*, 214 Ark. 818, 218 S.W.2d 94 (1949).

### **Proceedings for Removal.**

In a proceeding to remove the commissioners of an improvement district, it is not necessary that the city council should vote or make finding upon each separate charge; rather, it can decide upon proof as a whole. *Boullioun v. City of Little Rock*, 176 Ark. 489, 3 S.W.2d 334 (1928).

### **Review.**

Action of city council in refusing to remove councilman from the board of commissioners of the city is subject to certiorari review in the circuit court. *Tappan v. Helena Fed. Sav. & Loan Ass'n*, 193 Ark. 1023, 104 S.W.2d 458 (1937).

Where commissioner is removed by city council after petition filed by taxpayer for his removal and hearing upon it, proper remedy for review of proceedings of council is by certiorari, but court does not try the case de novo as writ is merely for errors of law, one of which may be the legal sufficiency of the testimony supporting order of the council. *Martin v. Cogbill*, 214 Ark. 818, 218 S.W.2d 94 (1949).

In reviewing city board's action, circuit court was not required to conduct a de novo review; circuit court reviews record of errors of law and for legal sufficiency of evidence to support action of board. *Martin v. Quinn*, 294 Ark. 60, 740 S.W.2d 627 (1987).

## **14-88-306. Chairman.**

A municipal board of improvement shall elect one (1) of their number chairman.

**History.** Acts 1881, No. 84, § 3, p. 161; 1909, No. 81, § 1, p. 224; C. & M. Dig.,

§ 5716; Pope's Dig., § 7356; Acts 1961, No. 70, §§ 1, 2; A.S.A. 1947, § 20-116.



**14-88-307. Quorum.**

A majority of a municipal board of improvement shall constitute a quorum for the transaction of business and the performance of the duties enjoined by this act.

**History.** Acts 1881, No. 84, § 3, p. 161; C. & M. Dig., § 5717; Pope's Dig., § 7357; A.S.A. 1947, § 20-118. **Meaning of "this act".** See note to § 14-88-101.

**14-88-308. No compensation.**

The members of a municipal board shall receive no compensation for their services.

**History.** Acts 1881, No. 84, § 3, p. 161; § 5716; Pope's Dig., § 7356; Acts 1961, 1909, No. 81, § 1, p. 224; C. & M. Dig., No. 70, §§ 1, 2; A.S.A. 1947, § 20-116.

**14-88-309. Interest in contracts unlawful — Penalty.**

(a) It shall be unlawful for any board of improvement, or any member thereof, in any city or town in this state to be interested, either directly or indirectly, in any contract made by the board for, or on behalf of, any improvement district.

(b) Any person violating the provisions of this section commits a felony and shall be:

(1) Fined in any sum not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000); and

(2) Imprisoned in the state penitentiary not less than one (1) year nor more than ten (10) years.

**History.** Acts 1909, No. 80, §§ 1, 4, p. 222; C. & M. Dig., §§ 5711, 5713; Pope's Dig., §§ 7350, 7352; Acts 1975, No. 928, § 7; A.S.A. 1947, §§ 20-120, 20-123.

**Publisher's Notes.** Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal

offense is amended or repealed by this act, the provisions so amended or repealed shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of this act.

**CASE NOTES****ANALYSIS**

Constitutionality.

Contracts void.

Transactions not invalidated.

**Constitutionality.**

Subsection (b) is valid. *Wilson v. Magnolia Petroleum Co.*, 181 Ark. 391, 26 S.W.2d 92 (1930).

**Contracts Void.**

A contract between the commissioners of a waterworks district and a corporation in which the commissioners were stock-

holders is void. *Gantt v. Arkansas Power & Light Co.*, 189 Ark. 449, 74 S.W.2d 232 (1934).

Contract by which waterworks district surrendered to private corporation privilege of furnishing water to consumer was held void from its inception where one of the commissioners owned stock in his own name and two in the name of their wives in the corporation when they entered into the contract. *Gantt v. Arkansas Power & Light Co.*, 194 Ark. 925, 109 S.W.2d 1251 (1937).

**Transactions Not Invalidated.**

The sale of an improvement district's bonds to a bank of which one of the commissioners was an officer did not invali-

date the assessment of benefits. *Davidson v. Sewer Imp. Dist.*, 182 Ark. 741, 32 S.W.2d 1062 (1930).

**14-88-310. Interest in loans unlawful — Penalty.**

(a) It shall be unlawful for a municipal board of improvement, or any member thereof, to:

(1) Loan the funds, or to be interested in the loan of the funds, raised in any improvement district; or

(2) Apply or use the funds for any purpose except the purpose for which they were raised; or

(3) Purchase, or to be interested in the purchase of, any lot or lands sold for the payment of delinquent assessments; or

(4) Loan money or furnish money or credit to any person, company, or corporation to make such a purchase.

(b) Any person violating the provisions of this section commits a felony and shall be:

(1) Fined in any sum not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000); and

(2) Imprisoned in the state penitentiary not less than one (1) year nor more than ten (10) years.

**History.** Acts 1909, No. 80, §§ 2, 4, p. 222; C. & M. Dig., §§ 5712, 5713; Pope's Dig., §§ 7351, 7352; Acts 1975, No. 928, § 7; A.S.A. 1947, §§ 20-121, 20-123.

**Publisher's Notes.** As to savings clause contained in Acts 1975, No. 928, see Publisher's Notes to § 14-88-309.

**CASE NOTES****Constitutionality.**

Subsection (b) is valid. *Wilson v. Magnolia Petroleum Co.*, 181 Ark. 391, 26 S.W.2d 92 (1930).

**Cited:** *Russell v. State*, 112 Ark. 282, 166 S.W. 540 (1914).

**14-88-311. Combining boards.**

Where there is more than one (1) improvement district in the city or town for the same general purpose, the same member may be on two (2) or more boards of improvement, or the boards of different districts may combine so as to form only one (1) board for the whole territory, to be thus improved so as to make the whole improvement uniform. However no money raised by assessment in one (1) district shall be expended in another district.

**History.** Acts 1881, No. 84, § 3, p. 161; § 1, p. 156; C. & M. Dig., § 5735; Pope's 1893, No. 158, § 1, p. 271; 1899, No. 94, Dig., § 7363; A.S.A. 1947, § 20-119.

### SUBCHAPTER 4 — OFFICERS SERVING DISTRICTS

## SECTION.

14-88-401. Penalty for misuse of funds generally.

14-88-402. Unlawful actions by subordinate officers — Penalty.

14-88-403. Appointment of collector and treasurer generally.

## SECTION.

14-88-404. Appointment of treasurer.

14-88-405. City improvement collector.

14-88-406. Attorney of cities of the second class and towns.

14-88-407. Oath of assessor.

**Effective Dates.** Acts 1897, No. 16, § 5: effective on passage.

Acts 1909, No. 80, § 6: effective on passage.

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1935, No. 78, § 4: approved Feb. 26, 1935. Emergency clause provided: "Whereas at the present time there are several different people collecting taxes in the same town which makes it inconve-

nient for the taxpayers thereof to determine the amount of and pay their taxes and also makes it more expensive than it should be upon said taxpayers an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

Acts 1995, No. 362, § 5: Feb. 20, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas that the present law pertaining to the representation of local improvement districts is outdated, unduly restricts representation of improvement districts to non-controversial matters and limits legal fees to amounts which prohibit the retention of counsel. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### 14-88-401. Penalty for misuse of funds generally.

Any commissioner, treasurer, attorney, or other subordinate officer appointed by a municipal board of improvement who uses or lends, or who participates, directly or indirectly, in any loan or use of funds belonging to the improvement district, for other than district purposes, shall be guilty of a felony. Upon conviction, he shall be confined in the penitentiary for a period of not more than five (5) years nor less than two (2) years.

**History.** Acts 1949, No. 195, § 24; 1953, No. 210, § 1; A.S.A. 1947, § 20-124.1.

**Publisher's Notes.** This section does

not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102, 14-90-103.



**14-88-402. Unlawful actions by subordinate officers — Penalty.**

(a) It shall be unlawful for the collector or treasurer of a municipal improvement district, or for any other subordinate officer appointed by the board of improvement, to loan or use, or to be interested in the loan or use of, any funds raised by the district.

(b) Any person violating the provisions of this section commits a felony and shall be:

(1) Fined in any sum not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000); and

(2) Imprisoned in the state penitentiary not less than one (1) year nor more than ten (10) years.

**History.** Acts 1909, No. 80, §§ 3, 4, p. 222; C. & M. Dig., §§ 5706, 5713; Pope's Dig., §§ 7345, 7352; Acts 1975, No. 928, § 7; A.S.A. 1947, §§ 20-122, 20-123.

**Publisher's Notes.** Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal

offense is amended or repealed by this act, the provisions so amended or repealed shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of this act.

**CASE NOTES****Constitutionality.**

Subsection (b) is valid. *Wilson v. Mag-nolia Petroleum Co.*, 181 Ark. 391, 26 S.W.2d 92 (1930).

**14-88-403. Appointment of collector and treasurer generally.**

(a) The board of a municipal improvement district shall appoint the collector and treasurer of the district, who shall take the oath of office required by § 14-88-302 and shall execute bond to the chairman of the board, each in a sum at least equal to twice the amount of moneys which will probably come to their hands, with good and sufficient security, to be approved by the board. The bond shall be conditioned that they will faithfully discharge the duties of their office and account for and pay over all moneys that may come to their hands according to law and the orders of the board for the district for which they are appointed.

(b) The Cities of Little Rock and Pine Bluff shall have power to provide, by ordinance, that the city collector shall be ex officio collector of improvement districts and to provide the manner of collecting and the compensation to be paid.

(c) The same person may be treasurer or collector of one (1) or more districts in the city or town, but the moneys of the different districts shall be kept separately.

**History.** Acts 1881, No. 84, § 11, p. 161; 1897, No. 16, § 2, p. 23; C. & M. Dig., §§ 5702, 5703; Pope's Dig., §§ 7339, 7342; A.S.A. 1947, §§ 20-124, 20-125.

## CASE NOTES

## ANALYSIS

Ex officio collectors.

Liability.

**Ex Officio Collectors.**

In view of this section, the clerk and the city collector of North Little Rock was not the collector of improvement districts in such city and a bond given for the faithful performance of his duties did not cover a defalcation in regard to funds belonging to improvement districts collected by him. *Aetna Cas. & Sur. Co. v. City of North Little Rock*, 157 Ark. 291, 248 S.W. 294 (1923).

**Liability.**

In an action by an improvement district to hold the city liable for funds of the

district deposited by the city collector in the district's authorized depository bank and lost in the bank's subsequent failure, it was held that the collector being dead and only one commissioner testifying that he did not authorize the deposit, it will not be presumed that the deposit was unauthorized, especially in view of the custom shown to exist of the collector making such deposits only upon a request of a representative of the district. *Board of Comm'rs v. City of Little Rock*, 190 Ark. 27, 76 S.W.2d 667 (1935).

**14-88-404. Appointment of treasurer.**

(a)(1) A municipal board of improvement may appoint a treasurer of the district, who shall take the oath of office prescribed by § 14-88-302 and shall execute a bond in favor of the board in a sum equal to the amount of moneys which will probably come into his hands in any one (1) year.

(2) The bond shall be signed by a corporate surety company authorized to do business as such in this state. It shall be conditioned that the treasurer will faithfully discharge the duties of his office and that he will account for and pay over all moneys that may come into his hands according to law and the orders of the board.

(b) The same person may be treasurer of more than one (1) district, but moneys of each shall be kept separately.

(c) The treasurer shall pay out no moneys except on order of the board and upon a warrant approved by the chairman or one (1) of the other commissioners duly appointed to act in behalf of the chairman.

**History.** Acts 1949, No. 195, § 24; 1953, No. 210, § 1; A.S.A. 1947, § 20-124.1.

not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102, 14-90-103.

**Publisher's Notes.** This section does

**14-88-405. City improvement collector.**

(a) The city councils of the cities of the first and second class are authorized and empowered to designate and appoint someone to collect all of the city improvement taxes, to be known as "city improvement collector."

(b) When so appointed by the council, the collector shall have exclusive power and authority to collect the taxes in all improvement

districts lying wholly or partially within the city, except such taxes as are collected by the regular county tax collector.

(c) The collector may or may not be a city official.

(d) The collector shall receive such remuneration as shall be fixed by the city council.

(e) The collector shall be required to give a bond for the faithful discharge of his duties as approved by the council.

(f) The collector's term of office shall be fixed by the council.

(g) The collector shall maintain an office or place of business open at all reasonable hours.

(h)(1) When any collector has been appointed under the provisions of this section and has qualified by giving bond, it shall be the duty of all persons at that time who are collecting such taxes to at once turn over to the collector all books and records in their possession pertaining to the collections.

(2) Anyone failing to comply with the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

**History.** Acts 1935, No. 78, §§ 1, 2; Pope's Dig., §§ 7340, 7341, 9663, 9664; A.S.A. 1947, §§ 20-126, 20-127. **Cross References.** City collector in cities of the second class, § 14-44-117.

#### **14-88-406. Attorney of cities of the second class and towns.**

(a)(1) In all cities of the second class and incorporated towns within the State of Arkansas, the attorney representing the municipality may be the attorney for all boards and commissioners of all local improvement districts within the city or incorporated town.

(2) Municipal improvement districts formed under § 14-88-201 et seq. for the purpose of acquiring, constructing, operating, or maintaining a recreational facility, and local improvement districts within cities of the second class or incorporated towns, may, at their option, employ private attorneys in lieu of the city attorney.

(b)(1) It shall be the duty of the attorney to:

(A) Advise the board at any time needed;

(B) Do all things enjoined upon him by the commissioners; and

(C) Perform all legal duties pertaining to the formation and operation of the district.

(2) The attorney shall represent a board in all suits brought for or against it.

(c) The attorney shall receive as his compensation such fees as may be agreed upon by the boards.

**History.** Acts 1931, No. 224, §§ 1-3; Pope's Dig., §§ 7338, 9757-9759; Acts 1985, No. 179, § 6; A.S.A. 1947, §§ 20-128 — 20-130; Acts 1995, No. 362, § 1.

**Amendments.** The 1995 amendment

substituted "may" for "shall" in (a)(1); substituted "§ 14-88-201 et seq." for "§ 14-88-202 et seq." and inserted "and local improvement districts within cities of the second class or incorporated towns" in



(a)(2); deleted the former last sentence in (c); and made stylistic changes.

CASE NOTES

ANALYSIS

Constitutionality.  
Power to employ.  
Private attorneys.

**Constitutionality.**

This section is not objectionable as unequal in application or restricting the municipality's right to contract. *Water Imp. Dist. v. Briner*, 185 Ark. 742, 48 S.W.2d 1104 (1932).

**Power to Employ.**

Commissioners of city, acting as a board for the improvement districts therein, had

power to employ the city attorney to represent all such districts in all legal matters and to prorate such attorney's continuing salary for such services among the districts. *Bourland v. Coleman*, 187 Ark. 392, 60 S.W.2d 1021 (1933).

**Private Attorneys.**

Under this section, an improvement district in a city of the second class or town cannot employ another attorney to sue for delinquent assessments. *Water Imp. Dist. v. Briner*, 185 Ark. 742, 48 S.W.2d 1104 (1932).

**14-88-407. Oath of assessor.**

The oaths of office of the assessors of municipal districts may be taken before any officer authorized to administer oaths.

**History.** Acts 1929, No. 64, § 20; Pope's Dig., § 7354; A.S.A. 1947, § 20-114.

SUBCHAPTER 5 — AFFAIRS OF DISTRICTS

SECTION.

- 14-88-501. Sale or lease of improvements.
- 14-88-502. Improvements outside limits.
- 14-88-503. Annexation of territory to district.

SECTION.

- 14-88-504. Priority of suits.

**Effective Dates.** Acts 1893, No. 158, § 3: effective on passage.

Acts 1899, No. 94, § 2: effective on passage.

Acts 1913, No. 125, § 9: approved Mar. 3, 1913. Emergency declared.

Acts 1919, No. 280, § 2: approved Mar. 17, 1919. Emergency declared.

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and

safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1967, No. 163, § 7: Feb. 28, 1967. Emergency clause provided: "It has been found and determined by the General Assembly that in many cities and towns in the State of Arkansas the streets and highways are subject to heavy traffic by motor vehicles, that on account of parking motor vehicles in the streets and the lack

of facilities for off-street parking of motor vehicles, vehicular traffic in the said streets and highways is made dangerous to drivers and to pedestrians, and that on account thereof the streets and highways are made hazardous to the property and lives of the residents of the State of Arkansas; that it is necessary in order to protect the property and lives of the residents of the State of Arkansas to provide adequate facilities for the off-street parking of mo-

tor vehicles and that only by the passage of this Act and giving it immediate effect can the lives and property of the residents of the State of Arkansas be protected. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

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### 14-88-501. Sale or lease of improvements.

(a) Any improvement district organized under the provisions of this chapter after February 1, 1967, may sell or lease its improvement, or any part thereof, to the city or town or to a public authority or other agency serving on behalf of the property owners of the district on such terms as the commissioners of the improvement board may deem for the best interest of the district and apply the proceeds therefrom on the payment of the principal of and interest on its outstanding bonds, if any, together with any paying agent's or other charges in connection therewith.

(b) The city or town within which the district is located is authorized to purchase or to lease as lessee and to operate the improvement of the district on such terms as it may agree with the commissioners.

**History.** Acts 1967, No. 163, § 5;  
A.S.A. 1947, § 20-140.

### CASE NOTES

**Cited:** McClure v. City Council of  
Paragould, 255 Ark. 521, 501 S.W.2d 247  
(1973).

### 14-88-502. Improvements outside limits.

When, in the opinion of the board of a municipal improvement district or the boards of different improvement districts, where combined and acting together in a city or town, it shall be necessary for the benefit of the inhabitants residing in the district or districts, it shall be lawful for money raised by assessment in the districts to be expended in:

(1) The purchase of lands or erection of houses, reservoirs, or other improvements necessary for the proper construction and operation of waterworks outside of the limits of the city or town in which the districts exist;

(2) The construction and operation of any portion of a sewerage system, or acquisition of rights-of-way therefor, which may be extended outside of the limits of any such city, town, or improvement district.

**History.** Acts 1881, No. 84, § 3, p. 161; § 1, p. 156; C. & M. Dig., § 5735; Pope's 1893, No. 158, § 1, p. 271; 1899, No. 94, Dig., § 7363; A.S.A. 1947, § 20-119.

### CASE NOTES

#### **Sewerage Systems.**

Where a sewer is extended beyond the limits of a city or improvement district to obtain a proper outlet, an assessment may

be levied to secure such outlet. *Kraft v. Smothers*, 103 Ark. 269, 146 S.W. 505 (1912).

### **14-88-503. Annexation of territory to district.**

(a)(1) When persons claiming to be a majority in value of the owners of real property in any territory contiguous to any improvement district organized in any city or town desire that the territory shall be annexed to the district, they may present their petition in writing to the city or town council, describing the territory to be annexed and the character of the improvement desired.

(2) Thereupon, the city or town council shall direct the clerk or recorder to publish for two (2) weeks, in some newspaper issued and having a general circulation in the county where the city or town is situated, a notice calling upon the property owners to appear before the council on a day named and show cause for or against the annexation.

(b)(1) On the day named in the notice, the council shall hear all persons who desire to be heard on the question whether a majority in value of the owners of real property in the territory sought to be annexed have signed the petition.

(2) Its findings shall have all the force and effect of a judgment and shall be conclusive unless, within thirty (30) days thereafter, suit is brought in the chancery court to review it.

(c) The finding of the council shall be expressed in an ordinance in case it is in favor of the petitioners, and in that event, the territory sought to be annexed shall become a part of the district, and the improvements petitioned for shall be made by the commissioners on the board of improvement.

(d) The commissioners shall make the assessment for the improvement on the territory annexed under the provision of this section on the same basis as if the territory was included in the original district.

(e) If petitioned for, the improvement in the territory annexed may be of different material or of a different method of construction from that in the original district.

**History.** Acts 1919, No. 280, § 1; C. & M. Dig., § 5733; Pope's Dig., § 7389; A.S.A. 1947, § 20-134.

**Cross References.** Annexation of territory upon extension of water, electric light, or sewer system, § 14-91-502.

### RESEARCH REFERENCES

**UALR L.J.** Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.



## CASE NOTES

## ANALYSIS

In general.  
Assessments.  
Improvements.  
Notice.  
Petition.  
Territory annexed.

**In General.**

Original improvement district and annexation must have separate assessments, bond issues, and construction contracts. *Bahlau v. Bloom*, 154 Ark. 349, 242 S.W. 547 (1922).

**Assessments.**

Where territory is annexed, the assessed benefits cannot exceed the limit of cost of the total value of the property in the entire district. *White v. Loughborough*, 125 Ark. 57, 188 S.W. 10 (1916); *Blackburn v. Dunlap*, 143 Ark. 625, 221 S.W. 176 (1920).

New assessors must be elected by the council if it should find that the old board had finished the original assessment. *Board of Comm'rs v. City of Little Rock*, 174 Ark. 519, 295 S.W. 972 (1927).

**Improvements.**

This section contemplates that, when territory is annexed, the improvements in the annexed territory are to be made by the commissioners of the districts according to the provisions of § 14-86-1501 et

seq. which, among other things, govern as to the mode of assessing benefits. *Poe v. Street Imp. Dist.*, 159 Ark. 569, 252 S.W. 616 (1923).

Improvement in annex must be of same general character as in original district; one district to pave and one to curb and gutter cannot be annexed to an original district, the purpose of which was to pave. *Price v. Street Imp. Dist.*, 169 Ark. 787, 276 S.W. 861 (1925).

**Notice.**

A notice which does not describe the territory to be annexed is void. *Blackburn v. Dunlap*, 143 Ark. 625, 221 S.W. 176 (1920).

**Petition.**

The petition need not limit the cost, but it must be proportionate to that of the original district. *Pledger v. Soltz*, 169 Ark. 1125, 278 S.W. 50 (1925); *Carnahan v. City of Fayetteville*, 175 Ark. 405, 1 S.W.2d 10 (1927).

**Territory Annexed.**

An annexation may embrace property in the original district and may be for work partly within it. *Miller v. Seymour*, 156 Ark. 273, 245 S.W. 811 (1922); *Davidson v. Sewer Imp. Dist.*, 182 Ark. 741, 32 S.W.2d 1062 (1930).

**Cited:** *Hazen v. City of Booneville*, 260 Ark. 871, 545 S.W.2d 614 (1977).

**14-88-504. Priority of suits.**

(a) All suits which involve the validity of any municipal improvement district, of its assessment of benefits or any individual assessment, or of its power to make the improvement petitioned for, or which involve the title to office of any of the commissioners or assessors of the district, and all suits to collect its taxes laid on its assessed benefits, shall be deemed suits involving the public interest and shall be advanced in all courts and heard at the earliest practical moment.

(b) All appeals in these suits shall be taken and perfected within thirty (30) days.

**History.** Acts 1913, No. 125, § 4; C. & M. Dig., § 5655; Acts 1929, No. 64, § 5;

Pope's Dig., § 7289; A.S.A. 1947, § 20-132.

SUBCHAPTER 6 — DISSOLUTION OF DISTRICTS

SECTION.

- 14-88-601. Applicability.
- 14-88-602. Authority to wind up affairs.
- 14-88-603. Procedures and final report.

SECTION.

- 14-88-604. Conveyances of lands.
- 14-88-605. Redemption of lands.

14-88-601. Applicability.

(a) This subchapter shall not apply to any municipal improvement district which operates a water system, a sewerage system, or an electric light or power system; nor to any district whose commissioners are elected by property owners; nor to any district which is repairing streets, sidewalks, or other improvements from the proceeds of redemptions or sales of lands forfeited to it under previously existing laws.

(b) This subchapter shall not apply to any municipal wharf improvement district or municipal paving improvement district which is entitled to, is eligible for, and can qualify for state aid and has not received any or all thereof.

**History.** Acts 1945, No. 215, § 1;  
A.S.A. 1947, § 20-136.

14-88-602. Authority to wind up affairs.

In any and all municipal improvement districts which, at the time of their organization, had boundaries coextensive with the city or town in which they were located, which have paid their bonds and other obligations and have levied no tax for the past five (5) years, and which still hold title to lands purchased at foreclosure sale for delinquent taxes or have past due taxes owing, and the commissioners on the board of improvement of the district have no further duties to perform except the collection of delinquent taxes, the commissioners may proceed to wind up their affairs as set out in this subchapter.

**History.** Acts 1945, No. 215, § 1;  
A.S.A. 1947, § 20-136.

CASE NOTES

ANALYSIS

In general.  
Funds.

**In General.**

This section providing method for winding up of affairs of improvement district is not an exclusive method, nor is it compulsory. Searcy Fed. Sav. & Loan Ass'n v. Searcy, 221 Ark. 360, 253 S.W.2d 211 (1952).

**Funds.**

City could not require banks holding funds of improvement district whose bonds had been paid to turn funds over to city for purpose of street repairs. Searcy Fed. Sav. & Loan Ass'n v. Searcy, 221 Ark. 360, 253 S.W.2d 211 (1952) (decision prior to enactment of § 14-89-1301).

**14-88-603. Procedures and final report.**

(a) The commissioners on the board of a municipal improvement district shall execute a deed in favor of the city conveying all real estate as to which it holds title and shall turn over to the city clerk a list of all lands which have not been sold to the district, but which are delinquent for nonpayment of taxes, and shall pay to the city all funds which it has on hand.

(b) The commissioners shall then file with the city or town council a final report bringing up to date its receipts and disbursements since the last annual report filed by it in compliance with § 14-89-1102.

(c) The city or town council shall examine and readjust the annual report as set out in § 14-89-1103.

(d) If the city or town council approves the report, the commissioners shall stand discharged from their duties in such capacity, and thereafter the city or town collector shall handle the collection of all delinquent taxes due the districts.

**History.** Acts 1945, No. 215, § 2;  
A.S.A. 1947, § 20-137.

**14-88-604. Conveyances of lands.**

All conveyances which are necessary as to lands to which a municipal improvement district holds title shall be executed under the hand of the mayor or acting mayor. The city or town seal shall be attached thereto, which shall be attested by the city or town clerk.

**History.** Acts 1945, No. 215, § 3;  
A.S.A. 1947, § 20-138.

**14-88-605. Redemption of lands.**

(a) Any person holding an interest in any land sold or delinquent to any municipal improvement district shall be permitted to obtain a deed or redemption receipt, as the case may be, by payment of the amount for which the land was sold to the district, without interest, or the face of the tax for which the land is delinquent in the event it has not been sold to the district.

(b) All moneys received from any of these redemptions shall be placed in the street fund of the city and shall be used in the maintenance of the streets of the district. No funds so received by the city shall be diverted from the street fund and used for any other purposes.

**History.** Acts 1945, No. 215, § 4;  
A.S.A. 1947, § 20-139.



## CHAPTER 89

### FISCAL AFFAIRS OF MUNICIPAL IMPROVEMENT DISTRICTS

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BORROWING OF MONEY.
3. PAYMENT OF BONDS.
4. REFUNDING INDEBTEDNESS.
5. RECEIPT OF TAX REVENUES GENERALLY.
6. DISTRICT SCHOOL TAX.
7. AID BY COUNTIES.
8. ADVANCEMENT OF FUNDS BY MUNICIPALITIES.
9. USE OF PROFITS.
10. PAYMENT OF MONEYS.
11. ANNUAL FINANCIAL SETTLEMENTS.
12. REFUND OF EXCESS COLLECTIONS.
13. SURPLUS FUNDS.
14. ANNUAL FINANCIAL REPORT.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

#### SECTION.

- 14-89-101. Applicability of water district accounting law.

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**Cross References.** Borrowing and bankruptcy, § 14-74-101 et seq.

**Effective Dates.** Acts 1985, No. 22, § 4: Feb. 5, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that municipal improvement districts should be required to file annual reports in the manner prescribed by Act 154 of 1959 for other improvement districts; that Act 154 of 1959 requires annual financial reports to be

filed by March of each year; and that this Act is immediately necessary in order to be implemented in time for the March 1985 reporting deadline. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

#### RESEARCH REFERENCES

**C.J.S.** 84 C.J.S., Tax., § 202.

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#### 14-89-101. Applicability of water district accounting law.

(a) Each municipal improvement district of any kind heretofore or hereafter established pursuant to the provisions of §§ 14-88-203, 14-88-205 — 14-88-207 shall be subject to and shall comply with the provisions of § 14-119-101 et seq.

(b) If the board of improvement of any improvement district established pursuant to §§ 14-88-203, 14-88-205 — 14-88-207 fails or refuses to comply with any provision of § 14-119-101 et seq., such failure or

refusal shall constitute misfeasance in office and shall be grounds for removal of the members of the board from office.

**History.** Acts 1985, No. 22, § 1; A.S.A. 1947, § 20-247.

## SUBCHAPTER 2 — BORROWING OF MONEY

### SECTION.

14-89-201. Authority generally.

14-89-202. Mortgage of water and light plants.

### SECTION.

14-89-203. Electric streetlight districts in cities with a population of more than 10,000.

**Cross References.** Borrowing money for repairs, replacements, improvements, and extensions of waterworks, electric plants, and sewers, § 14-91-501.

**Effective Dates.** Acts 1897 (Ex. Sess.), No. 47, § 2: effective on passage.

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1929, No. 207, § 3: approved Mar. 27, 1929. Emergency clause provided: "It is ascertained and hereby declared that the lighting of the streets of our cities is necessary for the safety of the traveling public, and that for want of proper lighting of the streets great facilities are given to highwaymen and other criminals in the perpetration of crimes against the public peace and safety; and it is therefore ascertained and hereby declared that the immediate operation of this act is essential for the preservation of the public peace and safety, and an emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1941, No. 310, § 3: approved Mar. 26, 1941. Emergency clause provided: "It

is hereby ascertained and declared that the passage of this act is essential in the making of public improvements throughout the State of Arkansas by which grade crossings may be eliminated and the overflow of public highways may be prevented, and highways may be made safer in other ways and that therefore there is an urgent need that this Act go into immediate operation, and that its immediate operation is essential to the public safety. An emergency is therefore declared, and it is hereby provided that it shall take effect and be in force immediately upon its passage."

Acts 1967, No. 163, § 7: Feb. 28, 1967. Emergency clause provided: "It has been found and determined by the General Assembly that in many cities and towns in the State of Arkansas the streets and highways are subject to heavy traffic by motor vehicles, that on account of parking motor vehicles in the streets and the lack of facilities for off-street parking of motor vehicles, vehicular traffic in the said streets and highways is made dangerous to drivers and to pedestrians, and that on account thereof the streets and highways are made hazardous to the property and lives of the residents of the State of Arkansas; that it is necessary in order to protect the property and lives of the residents of the State of Arkansas to provide adequate facilities for the off-street parking of motor vehicles and that only by the passage of this Act and giving it immediate effect can the lives and property of the residents of the State of Arkansas be protected. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full

force and effect from and after its passage and approval.”

Acts 1970 (Ex. Sess.), No. 45, § 4: Mar. 13, 1970. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval.”

Acts 1975, No. 224, § 5: became law without Governor’s signature, Feb. 19, 1975. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations and that the existing mandatory form of assessment ordinance for municipal improvement

districts is unduly restrictive to the financing of such improvements, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval.”

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval.”

## CASE NOTES

### Issuance of Bonds.

Sewer improvement districts are not bound by the provisions of Ark. Const., Art. 16, § 1. Even if, under *City of Hot Springs v. Creviston*, 288 Ark. 286, 705 S.W.2d 415 and 713 S.W.2d 230 (1986), bonds issued by a sewer improvement

district were held to be under the restrictions of Ark. Const., Art. 16, requiring an election prior to the issuance of bonds, bonds issued prior to that decision were not affected by it. *Bell v. Fulkerson*, 291 Ark. 604, 727 S.W.2d 141 (1987).

## 14-89-201. Authority generally.

(a) For preliminary expenses and to raise money to do the work or to pay for an improvement already completed, a municipal improvement district board may:

(1) Borrow money not exceeding the estimated cost thereof, including interest on the money borrowed to a date six (6) months subsequent to the estimated date of completion of the work and a reserve not to exceed one (1) year’s principal and interest requirements;



(2) To that extent, issue negotiable bonds or certificates of indebtedness bearing interest at rates provided in the resolution authorizing their issuance; and

(3) Pledge and mortgage all uncollected assessments for the payment thereof.

(b)(1) The board may also issue its negotiable bonds for the purpose of funding or refunding any of the floating debts of the improvement district or any outstanding bonds, including interest thereon due or about to become due, whether or not represented by coupons or interest certificates, theretofore issued to finance the construction of such an improvement already completed, including sewer systems, or to finance any betterments, extensions, or repairs thereto, irrespective of whether the outstanding bonds were originally issued by the improvement district.

(2)(A) The funding or refunding bonds may be exchanged for the outstanding bonds or interest thereon as provided in this section, or they may be sold and the proceeds thereof used in the retirement of the outstanding bonds and interest.

(B)(i) It shall be a felony for any officer of the district or any other person to use the proceeds of the funding or refunding bonds for any other purpose than that for which they are issued.

(ii) The party guilty of such a felony shall be punished as provided in §§ 14-88-309, 14-88-310, 14-88-402.

(3) For the repayment of funding or refunding bonds, the board may pledge and mortgage all uncollected assessments.

**History.** Acts 1881, No. 84, § 17, p. 161; C. & M. Dig., § 5708; Acts 1929, No. 64, § 17; Pope's Dig., § 7347; Acts 1941, No. 310, § 2; 1967, No. 163, § 3; 1970 (Ex. Sess.), No. 45, § 1; 1975, No. 224, § 2;

1981, No. 425, § 28; A.S.A. 1947, § 20-201.

**Cross References.** Issuance of bonds for preliminary expenses, § 14-86-702.

## CASE NOTES

### ANALYSIS

Constitutionality.

Bonds.

Estimated cost.

### Constitutionality.

An improvement district is not a "municipality" nor the agent of one within Ark. Const., Art. 16, § 1, which prohibits a county or municipality from issuing interest bearing evidences of debt. *Fitzgerald v. Walker*, 55 Ark. 148, 17 S.W. 702 (1891).

An improvement district is not a municipality and is not bound by the restrictions contained in Ark. Const., Art. 16, requiring an election prior to the issuance of

bonds. *Bell v. Fulkerson*, 291 Ark. 604, 727 S.W.2d 141 (1987).

### Bonds.

Improvement districts may sell their bonds at private sale and below par where not prohibited by statute. *Hopson v. Hellums*, 108 Ark. 460, 158 S.W. 771 (1913).

Where improvement district was authorized to borrow money, the power to issue negotiable bonds was implied. *Logan v. Sidewalk Dist. No. 6*, 163 Ark. 591, 260 S.W. 407 (1924) (decision prior to 1929 amendment).

The security of the original pledge follows refunding bonds. *Simpson v. Little*

Rock-North Heights Water Dist. No. 18,  
191 Ark. 451, 86 S.W.2d 423 (1935).

cost as reported to the municipal council  
and on file with the city clerk. Meyer v.  
Ring, 162 Ark. 9, 257 S.W. 388 (1924).

**Estimated Cost.**

The "estimated cost" is the estimated

**14-89-202. Mortgage of water and light plants.**

(a) Any district improvement board in any city or incorporated town in this state, in addition to the power given to the board by any statute to pledge all uncollected assessments to secure money borrowed by the board for the purpose of and use in the building, construction, and putting into operation a system of waterworks or an electric light plant in any district shall also have the power to mortgage any waterworks system or electric light plant to secure the payment of money borrowed by any of the boards as indicated and used in the building and putting into operation any waterworks system or electric light plant in any improvement district in any city or incorporated town in this state.

(b) Any such mortgagee or his assignees shall have all the rights against the property as is given mortgagees on property of individuals, either at law or in equity.

**History.** Acts 1897 (Ex. Sess.), No. 47,  
§ 1, p. 114; C. & M. Dig., § 5709; Pope's  
Dig., § 7348; A.S.A. 1947, § 20-204.

**14-89-203. Electric streetlight districts in cities with a population of more than 10,000.**

Improvement districts for the purpose of installing electric streetlights in cities having more than ten thousand (10,000) inhabitants may borrow money for the purpose of doing the work of construction at a rate of interest provided in the resolution of the board of improvement and may mortgage their improvements and pledge their income as security for the money borrowed, and they may execute negotiable bonds for the money borrowed.

**History.** Acts 1929, No. 207, § 2; 1981,  
No. 425, § 31; A.S.A. 1947, § 20-202.

**SUBCHAPTER 3 — PAYMENT OF BONDS**

SECTION.

14-89-301. Use of funds to pay off.

14-89-302. Default in payment.

**Effective Dates.** Acts 1927, No. 201,  
§ 2: approved Mar. 23, 1927. Emergency  
clause provided: "Since certain municipal  
corporations and boards of commissioners  
having controlled the work completed by

improvement district have on hand funds  
recovered in litigation or accumulated  
from operating expenses which are likely  
to be dissipated or squandered, an emer-  
gency is hereby declared to exist, and this

act being necessary for the immediate preservation of the public peace, health and safety, the same shall take effect and be in force from and after its passage.”

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: “It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability

to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage.”

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### 14-89-301. Use of funds to pay off.

It shall be lawful for any municipal corporation or board of commissioners having control of any improvement district within a municipal corporation, or any work completed by any district, to appropriate and use any funds recovered in litigation or for operating expenses for the purpose of paying off any bonded indebtedness of the district when the funds are not needed for the operating expenses of the district.

**History.** Acts 1927, No. 201, § 1; Pope's Dig., § 7361; A.S.A. 1947, § 20-208.

### 14-89-302. Default in payment.

(a) If any bond or interest coupon on any bond issued by any municipal improvement district is not paid within sixty (60) days after its maturity, it shall be the duty of the chancery court, on application of the trustee for the bondholders or of the holder of any such bond or coupons overdue to cause the collection of the taxes of the district and appoint an assessor to reassess the benefits, if necessary.

(b) The proceeds of the taxes and collections shall be applied after payment of cost, first to overdue interest and then to payment pro rata of all bonds issued by the board, which are then due and payable.

(c) The commissioners may be directed by suit to foreclose the lien of the taxes on the land. A suit so brought by the commissioners shall be conducted in all matters as suits by the board and with like effect, and the decrees and deeds therein shall have the same presumptions in their favor.

**History.** Acts 1929, No. 64, § 22; Pope's Dig., § 7337; A.S.A. 1947, § 20-203.

**Cross References.** Collection in mu-

nicipal bridge, suburban, and road districts, § 14-86-802.

### CASE NOTES

#### Overdue Interest.

An order was void which directed the purchase of bonds not due at 50 percent

discount from taxes collected leaving overdue interest unpaid. *Dickinson v. Mingea*, 191 Ark. 946, 88 S.W.2d 807 (1935).



## SUBCHAPTER 4 — REFUNDING INDEBTEDNESS

## SECTION.

14-89-401. Purpose.

14-89-402. Authority generally.

## SECTION.

14-89-403. Methods of raising revenue.

14-89-404. Form of bonds.

**Cross References.** Reorganizing districts upon issuance of refunding bonds, § 14-87-101 et seq.

Sale of refunding bonds when old bonds cannot be presented for payment, § 19-9-302.

**Effective Dates.** Acts 1933, No. 112, § 5: approved Mar. 18, 1933. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability of many improvement districts to pay their maturing bonds and interest coupons, there is grave danger that the taxpayers in such districts will lose their homes and that disorder and civil disturbance may result and this act is necessary for the preservation of the public peace, health and safety, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1937, No. 241, § 2: approved Mar. 10, 1937. Emergency clause provided: "It is ascertained and hereby declared that many improvement districts are unable to pay their maturing bonds and interest coupons, that judgments have been secured on such bonds, that by reason of the above mentioned conditions there is grave danger that the taxpayers in such districts will lose their homes through foreclosure of the lien securing the payment of the bonds, that such loss of homes would cause disorder and civil disturbance; and that this act is therefore necessary for the preservation of the public peace, health and safety. It is therefore declared that an emergency exists, and that this act shall be in force and effect from and after its passage."

Acts 1970 (Ex. Sess.), No. 43, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is

essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public

peace, health and safety, shall be in effect from and after its passage and approval.”

Acts 1985, No. 828, § 2: Apr. 4, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Section 1 of Act 112 of 1933 was amended by Section 11 of Act 425 of 1981 to clarify the maximum rate of interest that may be charged with respect to refunding bonds issued by municipal improvement districts, but that through an oversight Section 2 of said Act was not amended and said Section still contains a limitation of six percent on the maximum rate of interest that may be charged with respect to such refunding bonds, and that such inconsistency is prohibiting municipal improvement districts from issuing refunding bonds under current market conditions, and that the immediate passage of this Act is necessary to correct such inconsistency. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 865, § 2: Apr. 4, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Section 1 of Act 112 of 1933 was amended by Section 11 of Act 425 of 1981 to clarify the maximum rate of interest that may be charged with respect to refunding bonds issued by municipal improvement districts, but that through an oversight Section 2 of said Act was not amended and said Section still contains a limitation of six percent on the maximum rate of interest that may be charged with respect to such refunding bonds, and that such inconsistency is prohibiting municipal improvement districts from issuing refunding bonds under current market conditions, and that the immediate passage of this Act is necessary to correct such inconsistency. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

## CASE NOTES

### ANALYSIS

Constitutionality.

Construction.

Applicability.

#### Constitutionality.

This subchapter is not unconstitutional as providing for expenses not in the property owner's minds when the petition for the improvement is signed and the assessment of benefits made. *Benton v. Nowlin*, 187 Ark. 738, 62 S.W.2d 16 (1933).

#### Construction.

This subchapter constitutes a grant of power to municipal improvement districts and is not mandatory. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

#### Applicability.

This subchapter is prospective in applicability. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

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## 14-89-401. Purpose.

This subchapter is intended to permit only the refunding of valid outstanding bonds and accrued matured interest on the bonds of any municipal improvement district, expressly including bonds on which judgment has been rendered in any court and not including any other form of indebtedness, and then only after the board of improvement thirty (30) days prior to the actual refunding has given notice to do so in some newspaper of bona fide circulation in the county where the district which will refund is located.



**History.** Acts 1933, No. 112, § 1; 1937, 225, § 11; 1981, No. 425, § 11; A.S.A. No. 241, § 1; Pope's Dig., § 11343; Acts 1947, § 20-205. 1970 (Ex. Sess.), No. 43, § 1; 1975, No.

#### **14-89-402. Authority generally.**

(a) Any municipal improvement district of any city of the first or second class or incorporated town of this state shall have the power to fund and refund its outstanding indebtedness, including its bonded indebtedness and accrued matured interest on the indebtedness, and to extend the maturity of the indebtedness on such terms as the commissioners of the district shall deem for the best interest of the district. To that end, the district may issue the negotiable bonds of the district, with interest coupons attached. These refunding bonds shall run for a period not exceeding fifty (50) years from date thereof.

(b) The commissioners of the district may exchange new bonds for outstanding bonds, including accrued matured interest thereon, or may issue and sell new bonds and use the proceeds thereof to take up any of the outstanding bonds or other indebtedness of the district in the refunding thereof.

(c) These refunding bonds shall not be issued in a greater amount than is necessary to pay the outstanding bonds and accrued interest coupons then being refunded, with interest to the date the new bonds are delivered, plus expenses incurred in connection with the issuance of the new bonds. They shall not be delivered except upon the surrender and cancellation of a proportionate part of the indebtedness being refunded.

(d) These refunding bonds shall bear interest at such rate or rates as the commissioners shall provide in the resolution authorizing their issuance.

**History.** Acts 1933, No. 112, § 1; 1937, 225, § 11; 1981, No. 425, § 11; A.S.A. No. 241, § 1; Pope's Dig., § 11343; Acts 1947, § 20-205. 1970 (Ex. Sess.), No. 43, § 1; 1975, No.

#### **14-89-403. Methods of raising revenue.**

In order to provide for the additional interest requirement of refunding bonds and the expense incurred in connection with the issuance of refunding bonds, a municipal improvement district issuing refunding bonds may follow any one (1) of the alternative procedures hereinafter outlined and designated as subdivisions (1) and (2) of this section:

(1) A district issuing refunding bonds may provide by resolution of the board of commissioners, duly adopted, that the entire balance unpaid on the date of the refunding bonds of the assessment of benefits against each lot, block, and parcel of land and railroad track and right-of-way shall draw interest at any rate deemed advisable or necessary, as provided in the resolution of the commissioners authorizing the issuance of the refunding bonds, from the date of the refunding bonds until paid. However, the interest need not be collected until it is necessary to do so to avoid exceeding the total amount of benefits and,



if collected, shall be collected on each installment or annual levy separately. After the date of the refunding bonds, the annual levies of assessment of benefits shall be collected on the balance unpaid on the date of said refunding bonds against each lot, block, and parcel of land and railroad track and right-of-way in the improvement district. A certified copy of the resolution shall be filed by the secretary of the district with the collector of the district; or

(2) A district issuing refunding bonds may provide by resolution of the board of commissioners duly adopted that the entire balance unpaid on the date of the refunding bonds, for the assessment of benefits against each lot, block, and parcel of land and railroad track and right-of-way shall be the assessment of benefits against each respective lot, block, and parcel of land and railroad track and right-of-way for the refunding issue of bonds and shall draw interest, as provided in the resolution of the commissioners authorizing the issuance of the refunding bonds, from the date of the refunding bonds until paid. However, the interest need not be collected until it is necessary to do so to avoid exceeding the total amount of benefits and, if collected, shall be collected on each installment, or annual levy separately. After the date of the refunding bonds, the annual levies of the assessment of benefits shall be collected on the respective assessments of benefits as thus fixed against each lot, block, and parcel of land and railroad track and right-of-way, with or without an interest charge thereon, as the commissioners may deem necessary. However, when such a resolution is adopted by the board, it shall be certified by the secretary of the district, and it shall be filed with the city clerk or town recorder who shall publish in some newspaper published in the city or town, if there be one, and if not then in some newspaper published in the county and having a bona fide circulation in the city or town, a notice which shall be in the following form:

“NOTICE TO OWNERS OF PROPERTY IN ..... IMPROVEMENT DISTRICT NO. .... OF ....., ARKANSAS.

NOTICE IS HEREBY GIVEN that the Commissioner(s) of ..... Improvement District No. .... of ....., Arkansas, have filed with the undersigned a resolution fixing the assessment of benefits on each lot, block and parcel of land and railroad track and right-of-way in said improvement district, and the same is now subject to inspection. Any property owner in said district may appeal to the City (or Town) Council within ten (10) days from this date.

GIVEN this ..... day of ....., 19 ....

.....  
City Clerk (or Town Recorder)  
of .....

Within ten (10) days after the publication of the notice, the district or any property owner may apply to the city or town council to revise the assessment so made, and the district or the property owner may within thirty (30) days apply to the chancery court of the county to have the assessment revised and corrected. If no application is made to the

council within ten (10) days or to the court within thirty (30) days, the assessment shall become final and incontestable, subject only to annual revision as provided by law. On appeal to the city or town council, a hearing can be had as prescribed in § 14-90-501. When the assessment is filed, the city clerk or town recorder shall make the corrections upon the original assessment roll on file in red ink, and shall certify said assessment to the collector of the district.

**History.** Acts 1933, No. 112, § 2; § 1; 1985, No. 865, § 1; A.S.A. 1947, § 20-Pope's Dig., § 11344; Acts 1985, No. 828, 206.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Construction.  
Applicability.  
Assessments.  
Interest.

#### **Constitutionality.**

This section is not unconstitutional as transferring the power to make assessments from assessors to commissioners. *Benton v. Nowlin*, 187 Ark. 738, 62 S.W.2d 16 (1933).

#### **Construction.**

The cardinal difference between subdivisions (1) and (2) is that under subdivision (1) the existing unpaid balance of betterments is finally determined to be the particular and total benefits as a basis for refunding, while under subdivision (2) an opportunity for reassessment of benefits is afforded any property owner in the district. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

#### **Applicability.**

This section expressly negatives any retroactive effect or applicability of inter-

est on installment payment of benefits. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

#### **Assessments.**

No assessment of benefits can be levied by improvement district beyond that set out in the original assessment. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

#### **Interest.**

The provisions that interest on refunding bonds is to be levied only on the "entire balance unpaid on the date of the refunding bonds of the assessment of benefits against each lot, block, and parcel of land and railroad track and right-of-way ... from the date of the refunding bonds until paid ... clearly limit interest to the basis of unpaid benefit assessments which are such as of the date of the refunding bonds. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

Delinquent betterment assessments only draw interest from date of publication of notice of refunding. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 221 F.2d 649 (8th Cir. 1955).

## 14-89-404. Form of bonds.

All refunding bonds shall be negotiable instruments and may have coupons evidencing interest, payable at annual or semiannual periods, and shall have all the rights of security, including liens on assessments of benefits and levy of taxes on the lands, together with all remedies for their collection that are provided for the original bonds issued by a municipal improvement district and may be further secured by a pledge and mortgage of the assessment of benefits and taxes in the district, to be executed by the commissioners.

**History.** Acts 1933, No. 112, § 3; Pope's Dig., § 11345; A.S.A. 1947, § 20-207.

## SUBCHAPTER 5 — RECEIPT OF TAX REVENUES GENERALLY

### SECTION.

14-89-501. Road tax — Payment to certain improvement districts.

### SECTION.

14-89-502. Distribution of road tax in certain cities of the first class.

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**Cross References.** County road tax, § 26-79-101 et seq.

Proportion of tax to suburban improvement districts, § 14-92-236.

**Effective Dates.** Acts 1939, No. 90, § 2: approved Feb. 15, 1939. Emergency clause provided: "Whereas there are incorporated towns and cities of the second class in counties having two levying courts which have formed, or will hereaf-

ter form, municipal improvement districts for the purpose of improving streets and alleys, and said districts are handicapped by lack of funds and inadequate collection of assessed benefits, this act is found necessary for the public peace, health and safety and an emergency is declared to exist and this act shall be in effect from and after the date of its passage."

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### 14-89-501. Road tax — Payment to certain improvement districts.

(a) In counties which have two (2) levying courts, in which there is an incorporated town or city of the second class that has formed any municipal improvement district for the purpose of improving any of its streets or alleys, the amount of the three-mill road tax collected by the county on property situated within the district shall be paid by the tax collector for the county directly to the collector for the district, to be expended as funds of the district.

(b) This section shall not apply in any manner to cities of the first class.

**History.** Acts 1939, No. 90, § 1; A.S.A. 1947, § 20-216.

### 14-89-502. Distribution of road tax in certain cities of the first class.

(a) Whenever, by an act of the General Assembly or by the order of a county court, the three-mill road tax collected on the property in a street improvement district and annex in a city of the first class is given to the district and annex, respectively, as an aid to the property owners on account of the extra width of the street or for any other reason, the commissioners on the board of improvement may, if they deem it fair and equitable, distribute between the district and the annex the total amount received for both the three-mill tax, in the proportion that the



cost of the improvement in each bears to the total cost of the improvement in both.

(b) This section shall apply only to those counties having a population of eighty-five thousand (85,000) or more according to the latest federal census.

**History.** Acts 1927, No. 120, §§ 1, 2; Pope's Dig., §§ 9643, 9644; A.S.A. 1947, §§ 20-217, 20-218.

## SUBCHAPTER 6 — DISTRICT SCHOOL TAX

### SECTION.

14-89-601. Applicability.

14-89-602. Property subject to tax.

### SECTION.

14-89-603. Assessment and collection.

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**Effective Dates.** Acts 1933, No. 64, § 6: approved Mar. 2, 1933. Emergency clause provided: "In view of the facts which are hereby declared to exist that improvement districts of the foregoing type have been immune from school district taxation in this State notwithstanding the fact that they are revenue-producing, that the present shortage of school revenues in school districts where such improvement districts exist would be materially lessened by removing said exemp-

tion from taxation as applied to district school taxes and that the public school would be enabled to function longer as free public schools without compelling the patrons thereof to provide for private schools taught on a tuition basis, an emergency is hereby declared to exist; and this act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after its passage."

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### 14-89-601. Applicability.

(a) This subchapter shall apply in cities of the first class to any water, electric light, or power improvement district organized under the laws of this state, whether general or special, and operated by a governing improvement board of commissioners or directors elected by the vote of the property owners owning real property within the municipal improvement district.

(b) This subchapter shall likewise apply to such districts even when they may have been consolidated with each other or when a water district and a light district shall have been consolidated with a sewer district, though in the latter case the property owned by the sewer district or sewer department, as the case may be, shall not be subject to the terms of this subchapter.

**History.** Acts 1933, No. 64, § 1; Pope's Dig., § 10033; A.S.A. 1947, § 20-220.

**14-89-602. Property subject to tax.**

(a) The property, real and personal, of the kind of municipal improvement district described in § 14-89-601 shall be subject, in the school district of the domicile of the improvement district, to the district school tax levied by vote of the electors of the school district under the provisions of Arkansas Constitution, Amendment 11.

(b) If any such improvement district furnishes free electric lighting service and water to the municipality in which it is located, that part of its property, such as, the street and ornamental lighting equipment and fire hydrants, which is used exclusively for the purpose of furnishing free service, shall not be included in fixing the assessed valuation of the property of the improvement district.

**History.** Acts 1933, No. 64, § 2; Pope's Dig., § 10034; A.S.A. 1947, § 20-221.

**14-89-603. Assessment and collection.**

(a) The assessment of the value of property for taxation shall be made on a unit basis each year by the county assessor in the same manner as public utilities generally assessed by the Arkansas Public Service Commission, and the value thereof shall be returned on the personal property assessment book.

(b) The county clerk shall then extend the amount annually of the district school tax thereon on the tax books, and the taxes shall be collected by the county tax collector along with other taxes.

(c) In case of nonpayment, the remedy shall be by mandamus against the board of directors or commissioners of the improvement district and not by sale of the district's property.

**History.** Acts 1933, No. 64, § 3; Pope's Dig., § 10035; A.S.A. 1947, § 20-222.

**Cross References.** Assessment of utilities, § 26-26-1601 et seq.

**SUBCHAPTER 7 — AID BY COUNTIES****SECTION.**

14-89-701. Applicability.

14-89-702. Validity of indebtedness.

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**Effective Dates.** Acts 1924 (3rd Ex. Sess.), No. 3, § 2: approved June 30, 1924. Emergency clause provided: "This act being necessary for the immediate preserva-

tion of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

**14-89-701. Applicability.**

The provisions of this subchapter shall not apply to the following counties: Ashley, Carroll, Cross, Chicot, Lee, Prairie, Lawrence, Franklin, Van Buren, Jackson, Greene, Lincoln, Nevada, Hempstead, Faulkner, Madison, Monroe, Yell, Lonoke, White, Clay, Lafayette, Crawford, St. Francis, Polk, Phillips, Benton, Boone, Columbia, Clark, Calhoun, Ouachita, Scott, Dallas, Drew, Independence, Sharp, Miller, Izard, Little River, Union, Howard, Logan, Stone, Bradley, Grant, Craighead, Hot Spring, Baxter, Randolph, Sevier, Woodruff, Fulton, Montgomery, and Johnson.

**History.** Acts 1924 (3rd Ex. Sess.), No. 3, § 1; A.S.A. 1947, § 20-219.

**14-89-702. Validity of indebtedness.**

All warrants and other evidences of indebtedness allowed and issued by any county quorum court or judge of any county court, or by any city or town council or the mayor and clerk thereof, or which may be so allowed and issued for the aid of improvement districts in cities and towns, are declared to be valid and negotiable.

**History.** Acts 1924 (3rd Ex. Sess.), No. 3, § 1; A.S.A. 1947, § 20-219.

**SUBCHAPTER 8 — ADVANCEMENT OF FUNDS BY MUNICIPALITIES****SECTION.**

14-89-801. Definitions.

14-89-802. Conditions precedent.

**SECTION.**

14-89-803. Procedure for advances.

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**Effective Dates.** Acts 1973, No. 404, § 5; Mar. 20, 1973. Emergency clause provided: "The General Assembly has determined that improvement districts are valuable financing vehicles for needed extensions to municipal water and sewer systems and that the lack of authority for municipalities to advance necessary mon-

ey to pay the organizational expenses of improvement districts is a serious impediment to the formation of such districts. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

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**14-89-801. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(2) "Improvement district" means either a municipal improvement district or a suburban improvement district;

(3) "Organization expenses" include engineering fees, legal fees, fees of financial advisers, abstractors' fees, the costs of newspaper advertis-



ing, and all other necessary fees and expenses in determining the feasibility of and organizing the proposed improvement district; and

(4) "Area adjacent to the municipality" means all or any portion of the area lying outside, and within ten (10) miles, of the corporate limits of the municipality that the governing body determines should be served by the water or sewer system of the municipality.

**History.** Acts 1973, No. 404, § 3; A.S.A. 1947, § 20-246.

**Cross References.** Suburban improvement districts, § 14-92-201 et seq.

### **14-89-802. Conditions precedent.**

A municipality may advance available moneys derived from the operation of its water or sewer system, or other available moneys, to pay the organizational expenses of one (1) or more proposed improvement districts if the governing body of the municipality determines, as to each such district, that:

(1) The proposed improvement district will provide water or sewer services, or both, to an area within or adjacent to, or in part within and in part adjacent to, the municipality;

(2) The water or sewer facilities to be acquired or constructed by the improvement district will become a part of the water or sewer system of the municipality; and

(3) The water or sewer facilities to be acquired or constructed by the improvement district are required to complete the water or sewer system of the municipality so as to enable the municipal system to adequately serve the area within and adjacent to the municipality.

**History.** Acts 1973, No. 404, § 1; A.S.A. 1947, § 20-244.

### **14-89-803. Procedure for advances.**

(a) Moneys advanced under the authority of this subchapter shall be in such amounts and shall be paid to such persons, including, without limitation, to those persons doing the work or to trustees or committees created by the governing body for the purpose, at such times either in one (1) lump sum or in installments, from time to time, and under such conditions and restrictions as the municipal governing body shall determine and prescribe by ordinance.

(b) No one (1) ordinance shall authorize advances to more than one (1) improvement district.

(c) There may be one (1) ordinance authorizing, and prescribing the manner of making, all advances to or for the benefit of a single district, or multiple advances to or for the benefit of a single district may be authorized by separate ordinances.

**History.** Acts 1973, No. 404, § 2; A.S.A. 1947, § 20-245.

**SUBCHAPTER 9 — USE OF PROFITS**

## SECTION.

14-89-901. Applicability.

14-89-902. Construction.

14-89-903. Purpose of expenditures.

14-89-904. Special account to pay bonds.

14-89-905. Depreciation and reserve accounts — Improvements.

## SECTION.

14-89-906. Approval by municipal council.

14-89-907. Allocation of profits to districts and municipality.

14-89-908. Payments to districts and municipality.

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**Effective Dates.** Acts 1939, No. 208, § 9: approved Mar. 9, 1939. Emergency clause provided: "It is ascertained that because of economic conditions existing in the State of Arkansas for a period of several years a large number of people owning property subject to assessment in municipal improvement districts have been unable to pay assessments extended against such property and such property

owners are in danger of losing title to their property by reason of such assessments; and it being further ascertained that this act is necessary for the immediate preservation of the peace, health, safety, and general welfare of a large number of the people in the State of Arkansas, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

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**14-89-901. Applicability.**

(a) The provisions of this subchapter shall apply to any municipal improvement district in the State of Arkansas which has been created, either by special act of the General Assembly or under the general laws of the state, for the purpose of repairing, enlarging, overhauling, erecting, and equipping any electric power plant, waterworks system, or sewer system which may have been constructed by a previously existing district within the municipality.

(b) No part of this subchapter shall apply to a municipal plant operated solely by city commissioners without a majority vote of the commissioners.

**History.** Acts 1939, No. 208, § 7; A.S.A. 1947, § 20-215.

**14-89-902. Construction.**

This subchapter is cumulative, and it is expressly declared that this subchapter shall not modify, amend, or repeal §§ 14-199-202—14-199-205, relating to use of profits from municipally owned electric power plants or waterworks systems.

**History.** Acts 1939, No. 208, § 7; A.S.A. 1947, § 20-215.

**14-89-903. Purpose of expenditures.**

(a) Any improvement district within any city or town in the State of Arkansas which is created for the purpose of constructing, repairing, enlarging, and overhauling any electric power plant, waterworks system, or sewer system is authorized to use the profits, or any part thereof, derived from the operation of the plants or systems toward:

(1) The payment of the outstanding bonded indebtedness of all street, sewer, or other improvement districts within the limits of the municipality; and

(2) The payment of any obligations of the city or town which may have been incurred by the city or town in the manner provided by law.

(b) The expenditures authorized in this section shall be made as provided for in this subchapter.

**History.** Acts 1939, No. 208, § 1; A.S.A. 1947, § 20-209.      tric or water systems, § 14-199-201 et seq.

**Cross References.** Profits from elec-

**14-89-904. Special account to pay bonds.**

(a) At the end of each fiscal year of the operation of an electric power plant or waterworks system, the commissioners of a municipal improvement board shall set aside, in a special account out of the profits from the operation of the plant or system, such sum as may be necessary to pay all bonds and interest of the improvement district which shall accrue during the next ensuing fiscal year so that the district shall, at all times, have in the special account a sum sufficient to pay all principal bonds and interest which may accrue within the next fiscal year.

(b) The funds so deposited in the special account shall be used for no other purpose except the payment of bonds and interest of the district.

**History.** Acts 1939, No. 208, § 2; A.S.A. 1947, § 20-210.

**14-89-905. Depreciation and reserve accounts — Improvements.**

(a) Before any expenditures as authorized by § 14-89-903 shall be made, the commissioners of a municipal improvement board shall provide from the operation of an electric power plant or waterworks system adequate depreciation and reserve accounts.

(b) Adequate provisions shall also be made for such alterations, improvements, or extensions of the electric power plant or waterworks system as, in the judgment of the commissioners of the board, will be necessary during the ensuing year.

**History.** Acts 1939, No. 208, § 3; A.S.A. 1947, § 20-211.



**14-89-906. Approval by municipal council.**

The profits from the operation of any electric power plant or waterworks system shall not be used for the purposes set forth in § 14-89-903 until such expenditures by a municipal improvement district have first been authorized by resolution duly adopted by the council of the city or town.

**History.** Acts 1939, No. 208, § 4;  
A.S.A. 1947, § 20-212.

**14-89-907. Allocation of profits to districts and municipality.**

(a) After compliance with §§ 14-89-904 and 14-89-905, the remaining profits from the operation of an electric power plant or waterworks system shall be determined by the commissioners of a municipal improvement board.

(b) If the commissioners determine that the remaining profits from the operation of the plant or system, or any part thereof, shall be used for the purposes set forth in § 14-89-903, then the commissioners may, upon the adoption of a proper resolution by the city or town council, allocate to the various improvement districts within the municipality and for other municipal expenses the amounts which are to be appropriated for these purposes.

(c) No part of these profits shall be allocated to any district until the commissioners of the district have furnished proof to the commissioners of the light and water district that bonds and interest of the district which is to receive the allocation of profits will mature during the ensuing year and that the district will not be able to pay the maturities without collecting an assessment against the property of the district.

(d) The allocation to the various districts within the municipalities as prescribed shall be according to the following ratio: The total amount of bond and interest maturities of all street and other improvement districts within the municipality coming due during the particular year, that is, the year following the fiscal year for which the profit of the plant and system was determined, shall be determined, and the ratio which the total bond and interest maturities of any street and other improvement district for the fiscal year bears to the total bond and interest maturities of all the street and other improvement districts for the fiscal year shall be the percentage used to allocate to each street and other improvement district its proportion of the profit to be used for the retirement of the bonded indebtedness of any such district.

(e) The funds allocated to any district under the provisions of this subchapter shall be used exclusively for the purpose of paying bonds and interest of the districts and for no other purpose.

**History.** Acts 1939, No. 208, § 5;  
A.S.A. 1947, § 20-213.

**14-89-908. Payments to districts and municipality.**

(a) The amounts allocated to the various improvement districts within the limits of a municipality shall be paid to the districts when the commissioners on the boards of improvement shall request that it be paid in order that the funds may be used by such districts to pay the bonds and interest maturities of the districts which are about to become due.

(b) The amounts allocated to the municipality shall be paid into the treasury of the municipality upon resolution duly adopted by the council of the city or town.

**History.** Acts 1939, No. 208, § 6;  
A.S.A. 1947, § 20-214.

**SUBCHAPTER 10 — PAYMENT OF MONEYS**

## SECTION.

14-89-1001. Payment by treasurer.

14-89-1002. Warrant requirements.

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**Effective Dates.** Acts 1897, No. 16,  
§ 5: effective on passage.

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**14-89-1001. Payment by treasurer.**

The treasurer of a board of improvement shall pay out no moneys save upon the order of the municipal board of improvement and upon a warrant signed by the chairman thereof. He shall be allowed a commission not exceeding one percent (1%) upon all sums lawfully paid out, to be fixed by the board.

**History.** Acts 1881, No. 84, § 13, p. § 5705; Pope's Dig., § 7344; A.S.A. 1947, 161; 1897, No. 16, § 4, p. 23; C. & M. Dig., § 20-226.

**14-89-1002. Warrant requirements.**

(a) Under this subchapter, every warrant shall state upon its face to whom, the amount, and the purpose for which it is issued.

(b) All warrants shall be dated and shall be numbered consecutively in a record to be kept by the municipal board of improvement of the number and amount of each.

(c) No warrant shall be paid unless there is in the treasury funds enough to pay all outstanding warrants bearing a lower number.

(d) No warrant shall be increased by reason of any depreciation in the market value thereof, nor shall any contract or warrant be made payable or paid in anything but currency.

**History.** Acts 1881, No. 84, § 13, p. 161; C. & M. Dig., § 5707; Pope's Dig., § 7346; A.S.A. 1947, § 20-227.

SUBCHAPTER 11 — ANNUAL FINANCIAL SETTLEMENTS

SECTION.

14-89-1101. Penalties.  
14-89-1102. Filing requirement.

SECTION.

14-89-1103. Examination and adjustments.

**Cross References.** Publication of annual reports, § 1-3-105.

14-89-1101. Penalties.

Every member of any municipal improvement board who fails or refuses to make settlement as required by this subchapter, shall be guilty of a misdemeanor and, on conviction thereof, shall be fined in any sum not exceeding five hundred dollars (\$500). In addition thereto, he may be imprisoned for a period not exceeding sixty (60) days.

**History.** Acts 1895, No. 140, § 3, p. 205; C. & M. Dig., § 5720; Pope's Dig., § 7360; A.S.A. 1947, § 20-230.

14-89-1102. Filing requirement.

(a) Annually, during the month of September, all municipal boards of improvement created under § 14-88-212 shall file a settlement with the clerk of the city or town in which the improvements shall have been ordered showing all collections and money received and paid out, with proper vouchers for all payments.

(b) The settlement shall lie over for one (1) month for examination and adjustment, during which time any taxpayer of the district may file exceptions to the settlement.

**History.** Acts 1895, No. 140, § 1, p. 205; C. & M. Dig., § 5718; Pope's Dig., § 7358; A.S.A. 1947, § 20-228.

CASE NOTES

ANALYSIS

Applicability.  
Effect.  
Enforcement.

**Applicability.**

This section has no applicability to an action for an improvement district to recover from an employee and his surety

money embezzled by the employee. Kelley v. Ballard, 192 Ark. 663, 93 S.W.2d 1256 (1936).

**Effect.**

Report filed by commissioners admitting obligation to contractor who had made improvements before the bar of the statute of limitations attached to the



claim constituted acknowledgment of the indebtedness. Street Imp. Dist. No. 113 v. Mooney, 203 Ark. 745, 158 S.W.2d 661 (1942).

**Enforcement.**

Property owner is entitled to writ of mandamus to require commissioners to file report. Buchanan v. Halpin, 176 Ark. 822, 4 S.W.2d 510 (1928).

Mandamus will lie to compel compliance with this section. Street Imp. Dist. No. 113 v. Mooney, 203 Ark. 745, 158 S.W.2d 661 (1942).

**Cited:** Lawrence v. Jones, 228 Ark. 1136, 313 S.W.2d 228 (1958).

**14-89-1103. Examination and adjustments.**

(a) Whether any exceptions are filed or not, the city or town council shall proceed to examine the settlements and shall disallow any and all unjust charges and credits, if there are any.

(b)(1) The council shall readjust the settlement wherever an improper item may be included in it.

(2) The adjustment shall be finally subject to reexamination in a court of chancery for error or mistake upon suit brought by the board or by any taxpayer of the district.

**History.** Acts 1895, No. 140, § 2, p. 205; C. & M. Dig., § 5719; Pope's Dig., § 7359; A.S.A. 1947, § 20-229.

**CASE NOTES**

**Cited:** Boles v. Kelley, 90 Ark. 29, 117 S.W. 1073 (1909); Puryear v. City of Jonesboro, 110 Ark. 562, 163 S.W. 504 (1914); Water Imp. Dist. No. 1 v. Briner,

185 Ark. 742, 48 S.W.2d 1104 (1932); Kelley v. Ballard, 192 Ark. 663, 93 S.W.2d 1256 (1936).

**SUBCHAPTER 12 — REFUND OF EXCESS COLLECTIONS**

SECTION.

14-89-1201. Definition.

14-89-1202. Authority of street or water improvement districts.

SECTION.

14-89-1203. Delinquent      realty      not  
                                         counted.

**Effective Dates.** Acts 1949, No. 350, § 5: approved Mar. 21, 1949. Emergency clause provided: "Whereas there being no standard set forth for the refund assessment benefits in municipal improvement districts; and

"Whereas, there are street improvement districts which have fully paid their

bonded indebtedness and now desire to refund the excess collections, and this Act being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

**14-89-1201. Definition.**

As used in this subchapter, unless the context otherwise requires, “property owner” means the holder of the legal title at the time a refund is made.

**History.** Acts 1949, No. 350, § 2;  
A.S.A. 1947, § 20-232.

**CASE NOTES**

**In General.**

Refund on street assessment to the title owner of the property at the time board formally adopts its resolution directing disbursement does not impair a vested

right of former owner who had paid final assessment. Street Imp. Dist. No. 419 v. Lewis, 216 Ark. 595, 226 S.W.2d 813 (1950).

**14-89-1202. Authority of street or water improvement districts.**

When any municipal street or water improvement district has fully retired and paid out the bonded indebtedness of the district and there remains a surplus of money derived from the collection of benefit assessments levied against the real property in the district for the purpose of retiring the bonds or funds derived from the sale of unredeemed real property acquired by the district, the surplus funds may be refunded to the property owners of the district pro rata by the board of improvement of the district.

**History.** Acts 1949, No. 350, § 1; A.S.A. 1947, § 20-231; Acts 1995, No. 583, § 1.

**Amendments.** The 1995 amendment inserted “or water.”

**14-89-1203. Delinquent realty not counted.**

Under this subchapter, any real estate or parts or parcels of real estate which are delinquent at the time a refund is made shall not be counted in arriving at the pro rata distribution.

**History.** Acts 1949, No. 350, § 3;  
A.S.A. 1947, § 20-233.

**SUBCHAPTER 13 — SURPLUS FUNDS**

SECTION.	SECTION.
14-89-1301. Special improvement districts receiving state aid.	14-89-1304. Airport improvement district in city of the first class.
14-89-1302. Street improvement districts.	14-89-1305. Reversion generally in certain municipalities.
14-89-1303. Sewer improvement districts.	

**Effective Dates.** Acts 1953, No. 180, § 3: approved Mar. 2, 1953. Emergency

clause provided: “Whereas there are sewer improvement districts which have

fully paid their bonded indebtedness and have turned over the improvement to the municipality and such improvement is being operated and maintained by such municipality and such district now desires to turn over its surplus funds to such municipality, and this Act being necessary for the immediate preservation of the public peace, health and safety of the people of the State of Arkansas, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1953, No. 310, § 3: Mar. 26, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the poor condition of the streets within cities and incorporated towns constitutes a hazard to the life and limb of the inhabitants thereof, and that the provisions of this act will make funds available to in part alleviate the prevailing conditions. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage and approval."

Acts 1957, No. 222, § 2: Mar. 12, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that municipal improvement heretofore dissolved have unused funds remaining after their dissolution and that they have no further indebtedness, and that such funds may be utilized by the various municipal corporations concerned, and

that there is an urgent need by the municipal corporations for operating funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1967, No. 200, § 3: Mar. 6, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are municipal airport improvement districts in some of the first class cities of this State who have paid off and retired all of their bonded indebtedness; that such improvement districts still have a remaining surplus of property and moneys after paying all other legal obligations; that there is much confusion regarding the disposition of such surplus property and moneys in the possession of such improvement districts; that the municipal airports of many of the cities of the first class are in great need of additional funds to make improvements for the safety and comfort of their citizens; that it is necessary, in order to alleviate this chaos and confusion and to insure the municipal airports of cities of the first class of addition improvement funds, that this Act become effective immediately. Therefore, an emergency is hereby declared and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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### 14-89-1301. Special improvement districts receiving state aid.

(a) In instances where state aid has been extended to paving and other special improvement districts within cities and incorporated towns and all bonds and other obligations of the districts have been retired or money is set aside with the paying agents in amounts sufficient to provide for their retirement, then all moneys and other assets in the hands of the commissioners of the districts, or in the hands of the paying agents, in amounts exceeding the full debt service requirements of the bonds and other obligations shall be paid over to the respective treasurers of the cities and incorporated towns for the credit to the street fund, there to be used for the repair and maintenance of its streets.

(b) No such moneys may be paid over to the treasurers in amounts which shall exceed the state aid previously extended to paving and other special improvement districts, it being the intention of the



General Assembly in the enactment of this section to redefine such excess moneys as being available in the first instance for both the retirement of the districts' obligations and the improvement of its streets and alleys as prescribed.

(c) In instances in which the districts are no longer in existence, or are inactive, the city or town treasurer shall draw drafts on the bank accounts of the districts for the amounts so found to be due, and all the drafts shall be honored and paid by the banks upon which the drafts are drawn.

**History.** Acts 1953, No. 310, § 1; A.S.A. 1947, § 20-237.

**Publisher's Notes.** Acts 1953, No. 310, § 2, provided that this section did not apply to any municipal street improve-

ment district whose commissioners had adopted a resolution for a refund of surplus taxes under §§ 14-89-1201 — 14-89-1203 prior to March 26, 1953.

### CASE NOTES

#### **Constitutionality.**

This section violated Ark. Const., Amend. 13 insofar as applied to funds collected in the form of tax assessments from property owners, since neither the city nor the legislature had authority to

divert such funds to another purpose without the consent of the property owners in violation of the Constitution. *Searcy v. Headlee*, 222 Ark. 719, 262 S.W.2d 288 (1953) (decision prior to Ark. Const. Amend. 62).

#### **14-89-1302. Street improvement districts.**

When any municipal street improvement district has paid out and fully retired its bonded indebtedness and there remains a surplus of money in the district and thereafter the property embraced in the district, or at least two-thirds ( $\frac{2}{3}$ ) of it, shall have been included in a new paving improvement district, then the funds remaining on hand shall be paid by the commissioners on the bonds of the new district.

**History.** Acts 1951, No. 392, § 1; A.S.A. 1947, § 20-234.

**Publisher's Notes.** Acts 1951, No. 392, § 2, provided that this section did not apply to any municipal street improve-

ment district whose commissioners had adopted a resolution for a refund of surplus taxes under §§ 14-89-1201 — 14-89-1203 prior to March 21, 1951.

#### **14-89-1303. Sewer improvement districts.**

Where any municipal sewer improvement district has fully retired and paid out the bonded indebtedness of the district and there remains a surplus of money derived from the collection of benefit assessments levied against the real property in the district for the purpose of retiring the bonds or funds derived from the sale of unredeemed real property acquired by the district, the surplus funds may be transferred to the municipality where the municipality has taken over the sewer improvement constructed by the district and is maintaining it.

**History.** Acts 1953, No. 180, § 1; A.S.A. 1947, § 20-239.

**14-89-1304. Airport improvement district in city of the first class.**

When any municipal airport improvement district of a city of the first class has paid out and fully retired its bonded indebtedness, and there remains a surplus of money or property in the district, the commissioners of the district, after payment of all obligations of the district, shall pay the surplus funds and transfer the property to the city, and the city shall use any such funds and property so received for the sole purpose of making improvements upon the municipal airport of the city.

**History.** Acts 1967, No. 200, § 1;  
A.S.A. 1947, § 20-243.

**14-89-1305. Reversion generally in certain municipalities.**

(a) Any balance of money remaining in municipal improvement districts which have no further indebtedness, and which have been dissolved for three (3) years or more, shall revert to the municipal corporation and may be used for legitimate corporate purpose.

(b) This section shall apply only to municipal corporations whose population according to the latest federal census was not less than two thousand three hundred seventy-five (2,375) and not more than two thousand four hundred (2,400) persons.

**History.** Acts 1957, No. 222, § 1;  
A.S.A. 1947, § 20-240.

**SUBCHAPTER 14 — ANNUAL FINANCIAL REPORT**

## SECTION.

14-89-1401. Penalty.

14-89-1402. Filing required.

## SECTION.

14-89-1403. Failure to file.

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**Effective Dates.** Acts 1985, No. 22, § 4: Feb. 5, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that municipal improvement districts should be required to file annual reports in the manner prescribed by Act 154 of 1959 for other improvement districts; that Act 154 of 1959 requires annual financial reports to be filed by March of each year; and that this

Act is immediately necessary in order to be implemented in time for the March 1985 reporting deadline. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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**14-89-1401. Penalty.**

Any person violating the provisions of this subchapter or any person filing any false financial report shall be guilty of a misdemeanor.

**History.** Acts 1959, No. 154, § 2;  
A.S.A. 1947, § 20-242.

### **14-89-1402. Filing required.**

(a) All improvement districts in any city or incorporated town in this state established for the purpose of making improvements for municipal purposes shall file an annual financial report with the city clerk or recorder of the city or town on or before March 1-of each year, covering the financial affairs of the districts for the preceding year.

(b) The statement shall be certified and filed as provided in this section by the chief financial officer of each district.

**History.** Acts 1959, No. 154, § 1;  
A.S.A. 1947, § 20-241.

### **CASE NOTES**

**Cited:** Hyde v. Quinn, 298 Ark. 569, 769  
S.W.2d 24 (1989).

### **14-89-1403. Failure to file.**

If the board of improvement of any municipal improvement district established pursuant to §§ 14-88-203, 14-88-205 — 14-88-207, fails or refuses to file, or cause to be filed, the annual financial report required by this subchapter, such failure shall, in addition to any other penalty prescribed by law, constitute misfeasance in office and shall be grounds for removal of the members of the board from office.

**History.** Acts 1985, No. 22, § 2; A.S.A.  
1947, § 20-248.

## **CHAPTER 90**

# **ASSESSMENTS BY MUNICIPAL IMPROVEMENT DISTRICTS**

### **SUBCHAPTER**

1. GENERAL PROVISIONS.
2. BOARDS OF ASSESSMENT.
3. PROPERTY SUBJECT TO ASSESSMENT.
4. ASSESSMENT PROCEDURES GENERALLY.
5. APPEALS FROM ASSESSMENTS.
6. CORRECTION, REVISION, AND REDUCTION OF ASSESSMENTS.
7. LEVY OF ADDITIONAL TAX.
8. PAYMENT OF ASSESSMENTS.
9. COLLECTION OF ASSESSMENTS.
10. SUITS TO ENFORCE PAYMENT.
11. SALE OF PROPERTY.
12. APPEAL FROM DECREE OF SALE.
13. REDEMPTION OF PROPERTY.
14. SUPPLEMENTARY FORECLOSURE PROCEEDINGS.



## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

14-90-101. Definitions.

14-90-102. Applicability of 1949 provisions.

## SECTION.

14-90-103. Districts organized prior to July 1, 1952.

**Cross References.** Publication of notices when no newspaper published in county, city, or town, § 14-88-207.

**Effective Dates.** Acts 1907, No. 167, § 3: effective on passage.

Acts 1951, No. 363, § 3: Mar. 20, 1951. Emergency clause provided: "It being found and determined that the affairs of all municipal improvement districts heretofore or hereafter created in cities having

a Commission Form of Government can be more economically administered in said cities under the laws as same existed with regard thereto prior to February 28, 1949, the passage of this Act is necessary for the preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval."

## 14-90-101. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Real property" shall have the same meaning and significance as are attached to these words in statutes providing for the collection of state, county, and city revenue.

(2) "Blocks, lots, or parcels of land" shall include railway tracks and rights-of-way.

**History.** Acts 1881, No. 84, §§ 4, 5, p. 161; 1907, No. 167, § 1, p. 402; C. & M. Dig., §§ 5657, 5658; Pope's Dig., §§ 7285, 7292; A.S.A. 1947, §§ 20-401, 20-415.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-

1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

## CASE NOTES

## ANALYSIS

Real property.  
Street railways.

**Real Property.**

Words "real property" mean not only the lot, but also all the buildings, structures, improvements, and other fixtures thereon. *City of Eureka Springs v. Banks*, 206 Ark. 289, 174 S.W.2d 947 (1943).

**Street Railways.**

A street railway being personal prop-

erty, its value should not be included in the valuation of real property in ascertaining whether the petition for a local improvement is signed by a majority in value of the owners of real property in the district. *Lenon v. Brodie*, 81 Ark. 208, 98 S.W. 979 (1906).

**Cited:** *McAllister v. Forrest City St. Imp. Dist. No. 11*, 274 Ark. 372, 626 S.W.2d 194 (1981).

**14-90-102. Applicability of 1949 provisions.**

(a)(1) All municipal improvement districts created after June 9, 1949, shall be governed by the provisions of §§ 14-88-401, 14-88-404, 14-90-102, 14-90-801, 14-90-802, 14-90-901 — 14-90-915, 14-90-1002, 14-90-1107, 14-90-1301, 14-90-1303(a)-(b), 14-90-1405, and 14-90-1406.

(2)(A) All municipal improvement districts existing on June 9, 1949 shall continue to function under laws existing prior to June 9, 1949 except with respect to foreclosure suits.

(B)(i) Within sixty (60) days after any annual installment becomes delinquent, the board of commissioners shall proceed in accordance with the provisions of §§ 14-90-911, 14-90-1002, 14-90-1301, 14-90-1405, and 14-90-1406, excepting the first sentence of § 14-90-1002.

(ii) Sections 14-90-1107, 14-90-1301 and 14-90-1303(a)-(b) shall also be applicable to municipal improvement districts existing prior to June 9, 1949.

(b)(1) Sections 14-88-401, 14-88-404, 14-90-102, 14-90-801, 14-90-802, 14-90-901 — 14-90-915, 14-90-1002, 14-90-1107, 14-90-1301, 14-90-1303 (a)-(b), 14-90-1405, and 14-90-1406 shall not apply to any city which has a commission form of government organized under the provisions of Acts 1913, No. 13 and all municipal improvement districts heretofore or hereafter created in cities having such a commission form of government shall continue to function under the laws pertaining to them as they existed prior to February 28, 1949.

(2)(A) In cities having a commission form of government, improvements may be undertaken which will not exceed in cost sixty percent (60%) of the value of the real property in these municipal improvement districts as shown by the last county assessment.

(B) In computing the sixty percent (60%), interest on borrowed money shall not be treated as a part of the cost of it.

**History.** Acts 1949, No. 195, § 25; 1951, No. 363, § 1; A.S.A. 1947, § 20-455.

**A.C.R.C. Notes.** Except with respect to foreclosure suits, Acts 1949, No. 195 became effective on June 9, 1949. Acts 1953, No. 145 extended the provisions of Acts 1949, No. 195, to July 1, 1952. See §§ 14-90-102 and 14-90-103.

**Publisher's Notes.** Acts 1949, No. 195, § 27, as amended by Acts 1951, No. 363, § 2, read: "All laws and parts of laws applicable solely to municipal improvement districts which are in conflict herewith are repealed, excepting those which are to remain in force for the functioning of existing districts, and those laws shall

stand repealed when all existing districts have ceased to function, except as same affect municipal improvement districts heretofore or hereafter created in cities having a Commission Form of Government organized under the provisions of Act No. 13 of the Acts of the General Assembly of Arkansas of 1913, as amended. All laws and parts of laws applicable to municipal and other improvement districts which are in conflict herewith are repealed only so far as they affect municipal improvement districts. Nothing herein shall be construed as affecting Acts 126 and 329 of 1939."

**14-90-103. Districts organized prior to July 1, 1952.**

All municipal improvement districts organized prior to July 1, 1952, in compliance with the statutes which, prior to the enactment of Acts 1949, No. 195, regulated the organization of these districts are declared to be legally organized, all their proceedings under the provisions of these statutes are declared to be valid, and these districts shall continue to function under these statutes except with respect to foreclosure suits.

**History.** Acts 1953, No. 145, § 1; A.S.A. 1947, § 20-456.

**A.C.R.C. Notes.** Except with respect to foreclosure suits, Acts 1949, No. 195, became effective on June 9, 1949. Acts 1953, No. 145, extended the provisions of Acts 1949, No. 195, to July 1, 1952. See §§ 14-90-102 and 14-90-103.

**Publisher's Notes.** Acts 1949, No. 195 is codified as §§ 14-88-401, 14-88-404, 14-90-102, 14-90-801, 14-90-802, 14-90-901 — 14-90-915, 14-90-1002, 14-90-1107, 14-90-1301, 14-90-1303, 14-90-1405, and 14-90-1406.

**SUBCHAPTER 2 — BOARDS OF ASSESSMENT**

## SECTION.

14-90-201. Appointment.

14-90-202. Oath.

## SECTION.

14-90-203. Compensation.

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**Publisher's Notes.** Acts 1899, No. 183, § 10, provided that nothing in the act validated preexisting improvement districts.

**Effective Dates.** Acts 1907, No. 167, § 3: effective on passage.

Acts 1907, No. 406, § 2: effective on passage.

Acts 1969, No. 290, § 7: Mar. 21, 1969. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws governing the organization of municipal improvement districts previously required the petition of a majority in value of the

property owners in the affected territory, that this requirement was later increased to two-thirds in value, and that the requirements of existing laws obstruct the organization of many municipal improvement districts which would otherwise be organized for the construction or acquisition of improvements essential to the health and welfare of the inhabitants of this State. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

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**14-90-201. Appointment.**

As soon as a municipal board of improvement shall have formed a plan and shall have ascertained the cost of the improvement, it shall report this plan to the city or town council. The council shall appoint three (3) electors of the city or town who shall constitute a board of assessment to review the benefits to be received by each lot or block or other subdivision of land within the improvement district by reason of the proposed local improvement.



**History.** Acts 1881, No. 84, § 5, p. 161; 1889, No. 18, § 3, p. 17; 1899, No. 183, § 1, p. 323; 1901, No. 143, § 2, p. 264; 1907, No. 167, § 1, p. 402; C. & M. Dig., § 5657; Pope's Dig., § 7292; A.S.A. 1947, § 20-401.

### CASE NOTES

#### ANALYSIS

Annexation districts.  
Judicial review.  
Manner of appointment.  
Plans and costs.  
Term of service.

#### Annexation Districts.

When plans for annexation district are formed, the municipal council shall have power to appoint a new board of assessors to make assessment for the annexation district if the old board has finished its original assessment, and its action in the matter will not be reviewed. *Board of Comm'rs v. City of Little Rock*, 174 Ark. 519, 295 S.W. 972 (1927).

#### Judicial Review.

Where city council created an improvement district board and appointed three real property-owning commissioners to serve thereon as required by § 14-88-301 and where the board has not yet formed a plan or ascertained the cost of the improvement as required by this section, the question of the correctness of the assessments or the method employed cannot be brought before the courts. *Ketcher v. Mayor of N. Little Rock*, 2 Ark. App. 315, 621 S.W.2d 12 (1981).

#### 14-90-202. Oath.

Each of the assessors for a municipal improvement district shall, before entering upon the discharge of his duties, take oath that he will well and truly assess, to the best of his knowledge and ability, the value of all the benefits to be received by each landowner by reason of the proposed improvements as affecting each of the lots, blocks, or parcels of land, or railroad tracks and rights-of-way within the district.

**History.** Acts 1899, No. 183, § 2, p. 323; 1901, No. 143, § 3, p. 264; 1907, No. 167, § 2, p. 402; 1907, No. 406, § 1, p. 1023; C. & M. Dig., § 5658; Pope's Dig., § 7293; A.S.A. 1947, § 20-404.

### CASE NOTES

#### Failure to Take.

Failure of assessors to take oath is not jurisdictional, and no attack on assessments on this ground can be made after 30

#### Manner of Appointment.

The municipal council may appoint assessors by resolution adopted without roll call. *McLeod v. Purnell*, 164 Ark. 596, 262 S.W. 682 (1924).

#### Plans and Costs.

The municipal council cannot appoint assessors until the board of commissioners has made definite plans and ascertained the cost according to the plans. *Missouri Pac. R.R. v. Waterworks Imp. Dist. No. 1*, 134 Ark. 315, 203 S.W. 696 (1918).

Where board of improvement formed plans and procured estimate of cost and reported to municipal council that it had done so, but did not file the plans and estimate, the council was authorized to appoint the assessors. *Ingram v. Thames*, 150 Ark. 443, 234 S.W. 629 (1921).

#### Term of Service.

The board of assessors exists until the improvement district is paid out and there is no further service for it to perform. *Kirst v. Street Imp. Dist. No. 120*, 86 Ark. 1, 109 S.W. 526 (1908).

**Cited:** *McAllister v. Forrest City St. Imp. Dist. No. 11*, 274 Ark. 372, 626 S.W.2d 194 (1981).

days from publication of assessment ordinance. *Webster v. Ferguson*, 95 Ark. 575, 130 S.W. 513 (1910).

# **14-90-203. Compensation.**

(a) The members of a municipal improvement board of assessment shall receive such compensation as the board of improvement shall determine.

(b) The compensation shall be paid out of the funds collected by taxation of the local improvements or out of the proceeds of the money borrowed or bonds issued by the improvement district, as determined by the board of improvement.

**History.** Acts 1899, No. 183, § 9, p. § 7298; Acts 1969, No. 290, § 4; A.S.A. 323; C. & M. Dig., § 5663; Pope's Dig., 1947, § 20-408.

## **SUBCHAPTER 3 — PROPERTY SUBJECT TO ASSESSMENT**

### SECTION.

14-90-301. Validity of land descriptions based on plat.

### SECTION.

14-90-302. Railroads.

14-90-303. School districts.

**Preambles.** Acts 1947, No. 325 contained a preamble which read: "Whereas, in many cities and towns in the State of Arkansas, plats have been made of either the whole or parts of said cities or towns, and have been filed in the office of the city clerk, city recorder, or town recorder, as the case may be, and have been used as a basis of descriptions for tracts of real property so platted, but said plats have never been filed for record in the office of the circuit clerk and ex-officio recorder of the county in which the real property so platted lies, and therefore are not official records, but they have been used and accepted for the purpose of making the assessments of benefits in local improvement districts which include real property so platted;

"Now, therefore..."

**Effective Dates.** Acts 1913, No. 125, § 9: approved Mar. 3, 1913. Emergency declared.

Acts 1947, No. 325, § 3: approved Mar. 28, 1947. Emergency clause provided: "It is hereby ascertained and declared that because of the fact that there is some doubt as to the descriptions to be used for real property to be included in local improvement districts organized for the purpose of advancing the health and safety of the inhabitants of the respective communities of the state, an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

# **14-90-301. Validity of land descriptions based on plat.**

The descriptions of lands in an improvement district in any incorporated town or city of the first or second class which are based upon a plat, of a part or the whole, of the municipality, which has been filed in the office of the municipal clerk and is not in conflict with a duly executed and recorded plat of the same territory in the office of the circuit clerk and ex officio recorder of the county shall be valid descriptions of the lands so platted for the purpose of making the

assessment of benefits for any local improvement district on the lands within the territory so platted and for the collection of the assessments of benefits on the lands so platted and described, including suits brought to enforce their collection.

**History.** Acts 1947, No. 325, § 1; A.S.A. 1947, § 20-452.

**Publisher's Notes.** As to prior descrip-

tions validated, see Acts 1947, No. 325, § 2.

## 14-90-302. Railroads.

If any railroad company owning or operating a line of railway in this state shall occupy any street which is in an improvement district by having laid within it its railway tracks and by using the street as a right-of-way, then the railway tracks and right-of-way shall be subject to assessment by the board of assessment in the same manner as each lot, block, or other subdivision of land provided for in this act.

**History.** Acts 1881, No. 84, § 5, p. 161; 1907, No. 167, § 1, p. 402; C. & M. Dig., § 5657; Pope's Dig., § 7292; A.S.A. 1947, § 20-401.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-

1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

## CASE NOTES

### ANALYSIS

Railway tracks.

Right-of-way.

### Railway Tracks.

The tracks of an interurban railway lying within a city are not to be classified as real estate for the purpose of assessment for a local improvement, and the 1907 amendment to this section does not apply to street railways. *Fort Smith Light & Traction Co. v. McDonough*, 119 Ark. 254, 177 S.W. 926 (1915); *Board of Imp. v. Southwestern Gas & Elec. Co.*, 121 Ark. 105, 180 S.W. 764 (1915).

### Right-of-Way.

The right-of-way granted to a street railway company does not create an interest in the soil but only grants the right to use the streets in common with other travelers, and such a privilege is not real property within the meaning of the Arkansas Constitution which provides that property in cities and towns may be specially taxed for local improvements. *Board of Imp. v. Southwestern Gas & Elec. Co.*, 121 Ark. 105, 180 S.W. 764 (1915).

**Cited:** *McAllister v. Forrest City St. Imp. Dist.* No. 11, 274 Ark. 372, 626 S.W.2d 194 (1981).

## 14-90-303. School districts.

(a) The property of public school districts shall be subject to assessment for local improvements beneficial to them.

(b) The president or secretary of the district may sign the petition for the making of the improvements, when authorized by the board of directors.



**History.** Acts 1913, No. 125, § 7; C. & M. Dig., § 5654; Pope's Dig., § 7288; A.S.A. 1947, § 20-402.

## CASE NOTES

### ANALYSIS

Constitutionality.  
Applicability.

### Constitutionality.

Assessments for improvement benefits are not taxes in the usual and ordinary sense of the word and, therefore, this section does not conflict with Ark. Const., Art. 16, § 5. *Rainwater v. Haynes*, 244

Ark. 1191, 428 S.W.2d 254 (1968) (decision prior to Ark. Const., Amend. 59, § 17).

### Applicability.

This section is not retroactive and contains no authority for the levy of assessments on school property by a local improvement district formed prior to its enactment. *Special Sch. Dist. v. Board of Imp.*, 127 Ark. 341, 191 S.W. 918 (1917).

## SUBCHAPTER 4 — ASSESSMENT PROCEDURES GENERALLY

### SECTION.

14-90-401. Duties of assessors.

14-90-402. Notice of filing.

### SECTION.

14-90-403. Setoff for private improvements.

**Cross References.** Assessment of benefits for maintenance and repairs, § 14-91-601 et seq.

Partition of assessments among several owners of single tract, § 14-86-601.

**Effective Dates.** Acts 1907, No. 167, § 3: effective on passage.

Acts 1907, No. 406, § 2: effective on passage.

### 14-90-401. Duties of assessors.

(a)(1) The assessors for a municipal improvement district shall at once proceed to inscribe in a book to be used for that purpose the description of each of the lots, blocks, or parcels of land and railroad tracks and rights-of-way. The assessors shall assess the value of the benefit to accrue to each of the lots, blocks, or parcels of land and railroad tracks and rights-of-way by reason of the improvement.

(2) The assessment shall be entered in the book opposite the description.

(b) The assessors shall then subscribe the assessment and deposit it in the office of the recorder or city clerk of the town or city, where it shall be kept and preserved as a public record.

**History.** Acts 1899, No. 183, § 2, p. 323; 1901, No. 143, § 3, p. 264; 1907, No. 167, § 2, p. 402; 1907, No. 406, § 1, p. 1023; C. & M. Dig., § 5658; Pope's Dig., § 7293; A.S.A. 1947, § 20-404.

**Publisher's Notes.** Acts 1899, No. 183, § 10, provided that nothing in the act validated preexisting improvement districts.

CASE NOTES

ANALYSIS

Act as board.  
Assessments.

Act as Board.

Two members of the board of assessors cannot act as a board in the absence of third member and without notice to him. *Kirst v. Street Imp. Dist.* No. 120, 86 Ark. 1, 109 S.W. 526 (1908).

Assessors must act as a board and not individually. *Board of Comm'rs v. City of Little Rock*, 172 Ark. 544, 289 S.W. 478 (1927).

Assessments.

An action instituted by property owners attacking an assessment of benefits in an improvement district is collateral where it is instituted more than 30 days after approval of the assessments at the hearing on notice. *Lewellyn v. Street Imp. Dist.*, 172 Ark. 496, 289 S.W. 470 (1927).

14-90-402. Notice of filing.

Immediately on the filing of an assessment by the assessors of a municipal improvement district, the city clerk shall insert in some newspaper the following notice:

“The assessment of local Improvement District No. .... (giving the number of the district) was filed in my office on the ..... day of ....., 19...., and the same is now subject to inspection.

.....  
Clerk of the City of .....

**History.** Acts 1899, No. 183, § 3, p. 323; C. & M. Dig., § 5660; Pope's Dig., § 7294; A.S.A. 1947, § 20-405.

**Publisher's Notes.** Acts 1899, No. 183,

A suit in equity against the commissioners of an improvement district attacking the assessment of benefits for a street improvement commenced more than 30 days after notice of the filing of the assessments is a collateral attack and not maintainable. *Smith v. Grabel*, 177 Ark. 611, 7 S.W.2d 13 (1928).

Where one person owns several lots, blocks, or parcels of land in an improvement district, the benefits to them may be assessed together. *Board of Comm'rs v. Freeman*, 201 Ark. 1061, 148 S.W.2d 1076 (1941).

A complaint, if proven true, which alleged that assessors omitted the description of certain lands from their original assessment list and systematically excluded high value property from assessment and included low value property would show fraud. *McAllister v. Forrest City St. Imp. Dist.* No. 11, 274 Ark. 372, 626 S.W.2d 194 (1981).

§ 10, provided that nothing in the act validated preexisting improvement districts.

CASE NOTES

Time to Assess.

It was sufficient if the city council waited 10 days after publication of the notice before passing the ordinance assessing the cost of the improvement.

*Board of Imp. Dist. No. 5 v. Offenhauser*, 84 Ark. 257, 105 S.W. 265 (1907).

**Cited:** *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

**14-90-403. Setoff for private improvements.**

(a) If, in the construction of sidewalks or making of other improvements, any owner of taxable property in a municipal improvement district shall be found to have improved his own property in such a manner that his improvement may be profitably made a part of the general improvement of the kind in the district, being also as good as that required by the system as determined by the board of improvement, the board shall appraise the value of the improvement made by the owner and shall allow its value as a setoff against the assessment against his property.

(b) In case the owner who has made these improvements shall be found to have failed to come up to the required standard, the board may allow him the value of the materials, so far as they may be profitably used in perfecting the system prescribed, as a setoff against his property thus improved.

(c) In these cases, the board shall issue to the owner a certificate showing the amount of setoff allowed, which shall be received by the collector in lieu of money for the amount enumerated and charged against the property.

**History.** Acts 1881, No. 84, § 9, p. 161; C. & M. Dig., § 5672; Pope's Dig., § 7310; A.S.A. 1947, § 20-403.

**CASE NOTES****ANALYSIS**

Applicability.  
Allowance request.  
Certificate.  
Setoff allowed.  
Setoff denied.

**Applicability.**

This section relates only to the private ownership of property and cannot be extended so as to give owners of property in an old improvement district credit for an improvement made by the old district when it is merged into a new district. *Sembler v. Water & Light Imp. Dist.*, 109 Ark. 90, 158 S.W. 972 (1913).

**Allowance Request.**

A property owner must ask for an allowance as against an improvement district which uses his property in the construction in order to be entitled to the benefit of this section, but if he does ask such an allowance and it is refused, he may present his claim as a setoff to a suit to collect his assessment, if done in apt time. *Casey v. Trout*, 114 Ark. 359, 170 S.W. 75 (1914).

**Certificate.**

Where an allowance is made to a property owner for materials belonging to him and used in the improvement, the certificate issued to the landowner may be used in the payment of the tax for the improvement against the property. *Casey v. Trout*, 114 Ark. 359, 170 S.W. 75 (1914).

**Setoff Allowed.**

A property owner is entitled to compensation from the improvement district for curbing belonging to him and used by the district in the construction of the work of the district. *Casey v. Trout*, 114 Ark. 359, 170 S.W. 75 (1914).

Where property owners had curbed and guttered their property and the improvement was of value to an improvement district formed to improve the street, the commissioners of the district should allow the value of the improvement as a setoff against their assessments. *Meyer v. Board of Imp. Paving Dist.*, 148 Ark. 623, 231 S.W. 12 (1921).

**Setoff Denied.**

A property owner in a sewer district who has previously connected his property



to an adjoining sewer district is not entitled to set off the value of such connection against assessments upon his property in the former district. Board of Imp. Dist. No. 5 v. Offenhauser, 84 Ark. 257, 105 S.W. 265 (1907).

SUBCHAPTER 5 — APPEALS FROM ASSESSMENTS

SECTION.  
14-90-501. Notice and hearing.  
14-90-502. Findings and changes.

**Publisher's Notes.** Acts 1899, No. 183, § 10, provided that nothing in the act validated preexisting improvement districts.

14-90-501. Notice and hearing.

- (a) Anyone whose real estate is embraced in a municipal improvement district assessment may file, within ten (10) days from the giving of the notice, with the city clerk in writing, his notice of appeal from the action of the board of assessors in making the assessment of his property.
- (b) The appeal shall be heard and disposed of at the next regular meeting of the city council.
- (c) On the appeal, the matter shall be heard de novo on the evidence that may be adduced on either side.

**History.** Acts 1899, No. 183, § 4, p. 323; C. & M. Dig., § 5661; Pope's Dig., § 7295; A.S.A. 1947, § 20-406.

CASE NOTES

ANALYSIS

Appeals.  
Chancery suits.  
Collateral attack.  
Complaint.  
Federal jurisdiction.  
Reassessments.

**Appeals.**  
City council cannot grant relief to property owners not appealing. *Kirst v. Street Imp. Dist. No. 120*, 86 Ark. 1, 109 S.W. 526 (1908).

**Chancery Suits.**  
Landowners have a right to sue in chancery within 30 days to have an improper assessment set aside where the city council fails to give relief from an assessment which exceeds the value of benefits conferred on the property assessed. *Lenon v.*

*Street Imp. Dist. No. 512*, 181 Ark. 318, 26 S.W.2d 572 (1930).  
If school property was not benefited by an improvement, the directors of the school district could have appealed the finding of the assessors to the city council for a hearing de novo and then have had its assessment corrected by applying to the chancery court within 30 days after publication of the city ordinance confirming the assessments and, in absence of a showing that these procedures were successfully followed, it must be presumed that the school property was benefited. *Rainwater v. Haynes*, 244 Ark. 1191, 428 S.W.2d 254 (1968).

**Collateral Attack.**  
Refusal of a city council to postpone the hearing of a protest against a sewer assessment on account of the plaintiff's illness, even if arbitrary, was not a "demon-

strable error" such as would subject the assessment to a collateral attack. *Davidson v. Sewer Imp. Dist. No. 4*, 182 Ark. 741, 32 S.W.2d 1062 (1930).

### Complaint.

It is proper to require the plaintiff in a suit attacking an assessment in an improvement district for certain irregularities to state in his complaint when notice of the filing of the assessment was given since he has only 10 days after the notice is given in which to appeal from the assessment to the city council. *Boles v. Kelley*, 90 Ark. 29, 117 S.W. 1073 (1909).

### Federal Jurisdiction.

In an action to enjoin the assessment and collection of taxes, and where the plaintiffs had a plain, speedy, and efficient remedy in the Arkansas courts under this section, § 14-90-804, § 16-111-103, and § 16-113-306, the Tax Injunction Act, 28

U.S.C. § 1341, barred federal jurisdiction. *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

### Reassessments.

A city council is not authorized to repeal an improvement district reassessment ordinance which had been duly adopted and published where no suit was brought in the chancery court within 30 days after its publication for the purpose of correcting the reassessment. *City Council v. Merchants & Planters Bank*, 191 Ark. 1139, 89 S.W.2d 739 (1936).

The remedy of one complaining of reassessments for local improvements is in the chancery court under § 14-90-602, and not by appeal to the city council, since the jurisdiction to revise reassessments has been taken away from the council and vested in the chancery court. *Paving Dist. No. 3 v. Fowler*, 192 Ark. 1122, 96 S.W.2d 951 (1936).

## 14-90-502. Findings and changes.

(a) The city council shall enter on its minutes the result of its finding on any appeal of a municipal improvement district assessment and shall cause a copy of its finding to be certified to the board of assessors.

(b) The board shall make its assessment conform thereto if any change has been made in the assessment by the council.

**History.** Acts 1899, No. 183, § 5, p. 323; C. & M. Dig., § 5662; Pope's Dig., § 7296; A.S.A. 1947, § 20-407.

## CASE NOTES

**Cited:** *Kirst v. Street Imp. Dist. No. 120*, 86 Ark. 1, 109 S.W. 526 (1908).

## SUBCHAPTER 6 — CORRECTION, REVISION, AND REDUCTION OF ASSESSMENTS

### SECTION.

14-90-601. Correction of erroneous descriptions or omitted lands.

14-90-602. Revision of assessments.

### SECTION.

14-90-603. Annual readjustment.

14-90-604. Reduction of excessive assessments.

**Cross References.** Change of plans in cities with a population exceeding 60,000, § 14-91-1101 et seq.

Reassessment for repair, replacement,

improvement, or extension of electric light, water, and sewer systems, § 14-91-503.

**14-90-601. Correction of erroneous descriptions or omitted lands.**

(a)(1) The assessors of municipal improvement districts or their successors in office, or a majority of them, may file with the recorder or city clerk their certificate correcting erroneous descriptions of the lots, blocks, and parcels of land and railroad tracks and rights-of-way or describing them where the description was in the original assessment defective or wholly or partly omitted.

(2) In the case of omitted lands and lots, they shall in these cases make an assessment of benefits thereon.

(b) Thereupon, the city clerk or recorder shall publish in some newspaper published in the city or town, if there is one, and if not, then in some newspaper published in the county and having a bona fide circulation in the city or town, a notice in substantially the following form:

“The assessors of ..... Improvement District No..... have filed their certificate correcting mistakes in the assessment of benefits thereof, which certificate is now in my office subject to inspection. All property owners may appeal to the City Council at any time within ten (10) days from this date.

.....  
City Clerk (or Recorder) of the  
City (or Town) of .....

(c)(1)(A) Within ten (10) days after the publication of the notice, the district or any property owner may apply to the city or town council to review the assessment so made and corrected.

(B) The district, or any property owner, may apply within thirty (30) days to the chancery court of the county to have the amended assessment reviewed and corrected.

(2) If no application is made to the council within ten (10) days or to the court within thirty (30) days, the assessment shall become final and incontestable, subject only to annual revision so provided by law.

(3) On appeal to the council, the hearing shall be as prescribed in § 14-90-501.

(d) When the certificate correcting the assessment is filed, the city or town clerk or recorder shall make the corrections upon the assessment roll on file in red ink.

**History.** Acts 1899, No. 183, § 2, p. 323; 1901, No. 143, § 3, p. 264; 1907, No. 167, § 2, p. 402; 1907, No. 406, § 1, p. 1023; C. & M. Dig., § 5659; Acts 1929, No. 64, § 8; Pope’s Dig., § 7297; A.S.A. 1947, § 20-409.

**Publisher’s Notes.** Acts 1899, No. 183, § 10, provided that nothing in the act validated preexisting improvement districts.



CASE NOTES

Effect of Correction.

Where property insufficiently described was taxed, and taxes were not paid, and assessors thereafter attempted to correct description by authorized statutory procedure applying to lands wholly omitted

from tax list, or insufficiently described, such procedure, even if followed correctly, was not retroactive in effect, and fatal defect in prior assessments were not cured. *Schuman v. Winn*, 216 Ark. 153, 224 S.W.2d 538 (1949).

14-90-602. Revision of assessments.

(a) The commissioners of any municipal improvement district may require the assessors thereof to revise their assessment not more often than once per annum, increasing or diminishing the assessment against particular pieces of property as justice may require. However, the total amount of benefits shall never be diminished if the district shall have borrowed money or incurred indebtedness.

(b) On the filing of a reassessment, the city or town clerk shall publish in some newspaper published in the county a notice as follows:

“The reassessment of Improvement District No. .... (giving the style and number of the district) has been filed in my office, and the same is now open for inspection.

.....  
Clerk of the City (or Town) of .....

(c) Where assessments of benefits are revised in pursuance of this section, and notice is given as provided, the assessments shall be final and conclusive unless suit is brought in the chancery court within thirty (30) days after the publication of the notice provided for in subsection (b) of this section for the purpose of correcting the assessment.

**History.** Acts 1913, No. 125, § 2; 1929, No. 64, § 10; C. & M. Dig., § 5664; Pope’s Dig., §§ 7299, 7300; A.S.A. 1947, §§ 20-410, 20-411.

**Cross References.** Assessments not to be reduced after issuance of bonds, § 14-86-602.

CASE NOTES

ANALYSIS

- Failure to reassess.
- Increased or diminished.
- Jurisdiction.
- Physical change in property.

Failure to Reassess.

While section does not require district to revise assessments, district cannot insulate itself from inaction since excessive assessment constitutes taking of property without just compensation. *Sugarloaf Dev. Co. v. Heber Springs Sewer Imp. Dist.*, 34 Ark. App. 28, 805 S.W.2d 88 (1991).

Increased or Diminished.

Assessment cannot be diminished or increased where there has been no material physical change in the condition of the property since the original assessment. *Street Imp. Dist. No. 74 v. Goslee*, 183 Ark. 539, 36 S.W.2d 960 (1931); *Paving Dist. No. 2 v. Johnson*, 186 Ark. 1033, 57 S.W.2d 558 (1933); *Sugarloaf Dev. Co. v. Heber Springs Sewer Imp. Dist.*, 34 Ark. App. 28, 805 S.W.2d 88 (1991).

Where an assessment was increased when there had been no material change, it was held void on collateral attack. *Pav-*

ing Dist. No. 2 v. Johnson, 186 Ark. 1033, 57 S.W.2d 558 (1933).

#### **Jurisdiction.**

Jurisdiction to review reassessment of benefits is in the chancery court and not in the city council, so that action of council in reducing assessment is without authority and void. Paving Dist. No. 3 v. Fowler, 192 Ark. 1122, 96 S.W.2d 951 (1936).

#### **Physical Change in Property.**

Assessments cannot be increased or di-

minished except for some physical change that occurs in the property after the original assessment. Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis, 315 Ark. 353, 868 S.W.2d 73 (1993).

A material physical change is a basis upon which a property owner may obtain, by direct action, a reassessment of benefits for future periods; a ruling retroactively allowing relief for taxes already paid is error. Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis, 315 Ark. 353, 868 S.W.2d 73 (1993).

### **14-90-603. Annual readjustment.**

A municipal improvement district assessment may be annually readjusted according to additional improvements placed upon the lands and railroad tracks and rights-of-way when a succession of collections is necessary to pay for the improvements.

**History.** Acts 1899, No. 183, § 2, p. 323; 1901, No. 143, § 3, p. 264; 1907, No. 167, § 2, p. 402; 1907, No. 406, § 1, p. 1023; C. & M. Dig., § 5658; Pope's Dig., § 7293; A.S.A. 1947, § 20-404.

**Publisher's Notes.** Acts 1899, No. 183, § 10, provided that nothing in the act validated preexisting improvement districts.

### **CASE NOTES**

#### **Reconsideration.**

Municipal council is without power to return assessment to board for reconsideration. Kirst v. Street Imp. Dist. No. 120, 86 Ark. 1, 109 S.W. 526 (1908).

If, for any reason, the first assessment is found to be erroneous before it becomes final, it may be withdrawn and a new assessment made. Thomas v. Street Imp.

Dist. No. 296, 158 Ark. 187, 249 S.W. 590 (1923); Paving Dist. No. 3 v. Meyer, 158 Ark. 610, 250 S.W. 892 (1923).

Until the assessments have been acted upon by the municipal council, the assessors may be granted permission to withdraw them for reconsideration. Turner v. Adams, 178 Ark. 67, 10 S.W.2d 41 (1928).

### **14-90-604. Reduction of excessive assessments.**

(a)(1)(A) Wherever lands, or other real property, in an improvement district in cities and towns have been assessed for such an unreasonable or excessive amount that the taxes or assessments against the property and which have accumulated against the property are as much or more than the reasonable market value of the property, and there is no existing law authorizing a reduction of the assessment or giving relief to the property owner, any owner of the land or other real property may file a joint petition with the commissioners on the board of improvement of the district, may file a separate petition, or the commissioners may file a separate petition asking the chancery court having jurisdiction to foreclose the lien of assessments in the district to reduce the assessment.

(B) Where the petition is not a joint petition, the other party shall be made a defendant and served with ten (10) days' notice. Thereupon, it shall be the duty of the court to hear the petition.

(2) If on the hearing it appears that all outstanding bonds, interest coupons, and other indebtedness of the district have been fully paid, or that to facilitate the liquidation of the district all of its bonds, coupons, and other indebtedness have been acquired and are held by a trustee or by the commissioners of the district exclusively in trust for the property owners of the district, and if it further appears that the assessment is excessive and should be reduced, it shall be the duty of the court to reduce the assessment as equity and good conscience may require, taking into consideration the market value of the property involved, the benefits accruing to the property by reason of the improvement, the assessments against similar property in the district, the amount of other taxes and assessments against the property in other districts in which the land may be, and any other pertinent facts.

(b) This section is cumulative to other laws pertaining to improvement districts in cities and towns.

**History.** Acts 1947, No. 328, §§ 1, 2;  
A.S.A. 1947, §§ 20-453, 20-454.

### CASE NOTES

**Cited:** Sugarloaf Dev. Co. v. Heber  
Springs Sewer Imp. Dist., 34 Ark. App. 28,  
805 S.W.2d 88 (1991).

## SUBCHAPTER 7 — LEVY OF ADDITIONAL TAX

### SECTION.

14-90-701. Insufficient tax to complete  
improvement.

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**Effective Dates.** Acts 1929, No. 64,  
§ 23: approved Feb. 28, 1929. Emergency  
clause provided: "It is ascertained and  
hereby declared that by reason of the  
inability under the present laws to extend  
water mains and repair water plants  
there is great danger of conflagration, that  
by reason of the inability to extend electric  
light plants there is great danger to the  
public peace and safety, owing to the dark-

ness of the streets, and that by reason of  
the inability to extend and repair sewers  
there is great danger to the public health,  
and that for these reasons it is immedi-  
ately necessary that this act should go  
into operation, and it is therefore declared  
that an emergency exists, and this act  
shall be in force and effect from and after  
its passage."



### 14-90-701. Insufficient tax to complete improvement.

If the tax first levied shall prove insufficient to complete a municipal improvement or pay therefor, the board of improvement shall report the amount of the deficiency to the council, and it shall thereupon levy further taxes based on the assessment of benefits for a sum sufficient to complete the improvement or pay therefor, which shall be collected in the same manner as the first levy. However, the taxes levied shall never exceed the total amount of the benefits assessed or the limitation of cost fixed in the petition or by this act.

**History.** Acts 1881, No. 84, § 15, p. 161; C. & M. Dig., § 5665; Acts 1929, No. 64, § 11; Pope's Dig., § 7303; A.S.A. 1947, § 20-420.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-

1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

## CASE NOTES

### Levy of Taxes.

The council may before the first assessment is exhausted make a second levy without any new petition where the first

assessment is insufficient to complete the work. *Earl v. Board of Imp.*, 70 Ark. 211, 67 S.W. 312 (1902).

## SUBCHAPTER 8 — PAYMENT OF ASSESSMENTS

### SECTION.

14-90-801. Ordinance providing for installments.

14-90-802. Form of ordinance.

### SECTION.

14-90-803. Publication of ordinance.

14-90-804. Contesting payment.

14-90-805. Preference of assessment.

**Publisher's Notes.** Acts 1899, No. 183, § 10, provided that nothing in the act validated preexisting improvement districts.

**Preambles.** Acts 1967, No. 90, contained a preamble which read: "Whereas, many areas newly annexed to municipalities do not have water, sewer, and other improvements, and can obtain the same only by the formation of municipal improvement districts; and

"Whereas, many of such areas have low tax valuations because of the lack of development which will come only with the extension of water, sewer, and other municipal benefits; and

"Whereas, the construction costs of such improvements have risen in recent years to such an extent that the present cost

limitation on said improvements does not permit the landowners to benefit their property with improvements constructed by a municipal improvement district;

"Now, therefore ...."

Acts 1967, No. 351 contained a preamble which read as follows: "Whereas, Act No. 90 of the 1967 Acts of the General Assembly of the State of Arkansas raised the cost limitation of any municipal improvement district from 60% to 80% of the assessed value of the real property in the district; and

"Whereas, through inadvertence, when Senate Bill 22 (which became Act 163 of 1967) was adopted the cost limitation was left at 60%, and said limitation is not sufficient to permit many municipal improvement districts in Arkansas to con-

struct needed facilities ....”

Acts 1971, No. 107, contained a preamble which read: “Whereas, many areas within municipalities do not have adequate water, sewer and other improvements, and can obtain the same only by the formation of municipal improvement districts; and

“Whereas, the construction costs of such improvements have risen in recent years and the present cost limitation on such improvements does not permit the land-owners to benefit their property with improvements constructed by a municipal improvement district in some instances ....”

**Effective Dates.** Acts 1913, No. 5, § 3: approved Jan. 30, 1913. Emergency declared.

Acts 1913, No. 125, § 9: approved Mar. 3, 1913. Emergency declared.

Acts 1921, No. 395, § 2: effective on passage.

Acts 1925, No. 184, § 2: effective on passage.

Acts 1929, No. 64, § 23: Feb. 28, 1929. Emergency clause provided: “It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage.”

Acts 1935, No. 145, § 8: approved Mar. 20, 1935. Emergency clause provided: “It is ascertained and hereby declared that by reason of the fact that heretofore it has been necessary to obtain the consent of only a bare majority in value of the owners of real property in order to organize a local improvement district, the organization of such districts all over the State of Arkansas has been in the past greatly abused, advantage has been taken of the owners of property therein and burdensome taxes have been laid upon property owners without any actual increase in property values as compensation therefor, many of

such districts having been organized for promotion purposes; that many property owners throughout the State are in danger of losing their said property by reason of their inability to pay the said local improvement taxes; and that unless legislation is immediately enacted making it necessary to obtain the consent of more than a majority in value of said property owners the practice of organizing such districts and the abuse thereof will be continued, all to the serious detriment and injury of owners of property. It is, therefore, found and declared that an emergency exists, and this act shall be in force and effect from and after its passage.”

Acts 1951, No. 397, § 2: Mar. 21, 1951. Emergency clause provided: “It is hereby found and declared by the General Assembly that hardship is being worked by the inability of taxpayers to pay their taxes and this will in a great measure afford them relief. Therefore, an emergency is declared to exist and this Act being necessary for the public peace, health and safety shall take effect and be in force from the date of its approval.”

Acts 1967, No. 90, § 2: Feb. 14, 1967. Emergency clause provided: “That it is hereby ascertained and declared that there is a real and urgent need to raise the present 60% cost limitation on municipal improvement districts in order that property owners in sparsely-built municipal areas may obtain for themselves water, sewer, and other improvements; that there is an urgent need for such services; and an emergency is therefore declared to exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval.”

Acts 1967, No. 163, § 7: Feb. 28, 1967. Emergency clause provided: “It has been found and determined by the General Assembly that in many cities and towns in the State of Arkansas the streets and highways are subject to heavy traffic by motor vehicles, that on account of parking motor vehicles in the streets and the lack of facilities for off-street parking of motor vehicles, vehicular traffic in the said streets and highways is made dangerous to drivers and to pedestrians, and that on account thereof the streets and highways are made hazardous to the property and



lives of the residents of the State of Arkansas; that it is necessary in order to protect the property and lives of the residents of the State of Arkansas to provide adequate facilities for the off-street parking of motor vehicles and that only by the passage of this Act and giving it immediate effect can the lives and property of the residents of the State of Arkansas be protected. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 351, § 2: approved Mar. 14, 1967. Emergency clause provided: "That it is hereby ascertained and declared that there is a real and urgent need for the State's municipal improvement districts to be able to construct needed facilities, and that because of undeveloped lands in the boundaries of the districts the districts have insufficient tax evaluations to permit construction under the 60% limitation in order to meet the increasing needs for public services; an emergency is therefore declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1969, No. 290, § 7: Mar. 21, 1969. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the laws governing the organization of municipal improvement districts previously required the petition of a majority in value of the property owners in the affected territory, that this requirement was later increased to two-thirds in value, and that the requirements of existing laws obstruct the organization of many municipal improvement districts which would otherwise be organized for the construction or acquisition of improvements essential to the health and welfare of the inhabitants of this State. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1971, No. 107, § 2: Feb. 18, 1971. Emergency clause provided: "That it is hereby ascertained and declared that there is a real and urgent need to elimi-

nate the present 80% cost limitation on municipal improvement districts in order that property owners in municipal areas may be provided with an adequate means to obtain for themselves water, sewer and other improvements; that there is an urgent need for such services and an emergency is therefore declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1975, No. 224, § 5: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations and that the existing mandatory form of assessment ordinance for municipal improvement districts is unduly restrictive to the financing of such improvements, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1991, No. 504, § 7: Mar. 13, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the impairment of the rights of owners of real property located within various improvement districts to prepay their assessments greatly infringes on their rights to own, manage, and enjoy their real property and that it must be made unimpeachably clear that these owners of real property do have and should have the right to prepay these assessments and to be released from the liens upon the prepayment of these assessments. Therefore, in order to clarify and extend rights of owners of real property located within various improvement districts, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public



peace, health, and safety, shall be in full force and effect from and after its passage and approval."

### 14-90-801. Ordinance providing for installments.

(a) It shall be provided, by ordinance, that the municipal improvement district assessment of benefits shall be paid in successive annual installments so that the tax levied in any one (1) year shall not exceed twenty-five percent (25%) of the assessed benefits accruing to real property.

(b)(1) The ordinance shall provide that the first annual installment shall be collected by the county tax collector on the date fixed in the ordinance, and the second and subsequent annual installments shall be paid thereafter with the first installment of general taxes beginning with the installment of general taxes becoming due more than five (5) months after the date fixed in the ordinance.

(2) The municipality may provide in the ordinance that, after payment of the initial installment, the annual assessment of benefits may be paid in quarterly installments along with the quarterly installments of ad valorem taxes at the election of the taxpayer.

(c) The ordinance may provide that the collection of the annual installment shall be suspended, in whole or in part, for any year upon the filing with the collector, by December 1 of the preceding year, by the commissioners of the district of a certificate reciting the amount of funds available to meet the debt service requirements of the bonds of the district and, if necessary to provide additional funds sufficient therefor, certifying the percentage of the next annual installment on the amount of benefits necessary to be collected.

**History.** Acts 1881, No. 84, § 5, p. 161; 1899, No. 183, § 6, p. 323; 1901, No. 143, § 4, p. 264; 1913, No. 125, § 3; C. & M. Dig., § 5666; Acts 1921, No. 395, § 1; 1925, No. 184, § 1; 1929, No. 64, § 12; 1935, No. 145, § 4; Pope's Dig., § 7304; Acts 1949, No. 195, § 1; 1951, No. 397, § 1; 1967, No. 90, § 1; 1967, No. 163, § 4; 1967, No. 351, § 1; 1971, No. 107, § 1;

A.S.A. 1947, § 20-412.

**Publisher's Notes.** The 1949 amendment to this section does not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102 and 14-90-103.

**Cross References.** Levy of tax for preliminary expenses, § 14-86-701.

### CASE NOTES

#### Failure to Comply.

If council refuses to pass the assessment ordinance, it can be compelled to do so by mandamus. *Board of Imp. v. Earl*, 71 Ark. 4, 69 S.W. 577, 71 S.W. 666 (1903); *Paving Dist. No. 36 v. Little*, 170 Ark. 1160, 282 S.W. 971 (1926).

**Cited:** *Kirst v. Street Imp. Dist. No. 120*, 86 Ark. 1, 109 S.W. 526 (1908);

*McDonnell v. Improvement Dist. No. 145*, 97 Ark. 334, 133 S.W. 1126 (1911); *Bateman v. Board of Comm'rs*, 102 Ark. 306, 143 S.W. 1062 (1912); *Cherry v. Bowman*, 106 Ark. 39, 152 S.W. 133 (1912); *Deane v. Moore*, 112 Ark. 254, 165 S.W. 639 (1914); *Rogers v. Semmes*, 123 Ark. 467, 185 S.W. 479 (1916); *White v. Loughborough*, 125 Ark. 57, 188 S.W. 10

(1916); *Malvern v. Nunn*, 127 Ark. 418, 192 S.W. 909 (1917); *Bottrell v. Hollipeter*, 135 Ark. 315, 204 S.W. 843 (1918); *Blackburn v. Dunlap*, 143 Ark. 625, 221 S.W. 176 (1920); *Withrow v. City of Nashville*, 145 Ark. 340, 224 S.W. 614 (1920); *Meyer v. Board of Imp. Paving Dist.*, 148 Ark. 623, 231 S.W. 12 (1921); *Brown v. Board of Comm'rs*, 165 Ark. 585, 265 S.W. 81 (1924); *Hill v. Walthour*, 166 Ark. 277, 266 S.W. 85 (1924); *Pledger v. Soltz*, 169 Ark. 1125, 278 S.W. 50 (1925); *Paving Dist. No. 36 v. Little*, 170 Ark. 1160, 282 S.W. 971 (1926); *Fry v. Poe*, 175 Ark. 375, 1 S.W.2d 29 (1927); *Stevens v. Shull*, 178 Ark. 269, 10 S.W.2d 511 (1928); *Street Imp. Dist. No. 113 v. Mooney*, 203 Ark. 745, 158 S.W.2d 661 (1942); *Jones v. Jones*, 236 Ark. 296, 365 S.W.2d 716 (1963).

### 14-90-802. Form of ordinance.

The ordinance referred to in § 14-90-801 may be in substantially the following form:

"WHEREAS, a majority in value of the property holders owning property adjoining the locality to be affected and situated in District No..... organized for the purpose of ..... have petitioned the governing body of the city (or town) of ..... for the construction of said improvement, and that the cost thereof shall be assessed upon the real property of said district according to the benefits received; and

"WHEREAS, said benefits received by each and every block, lot, and parcel of real property situated in said district equals or exceeds the local assessment thereon; and

"WHEREAS, the estimated cost of said improvement is ..... Dollars:

"THEREFORE, it is now ordained by the governing body of the city (or town) of ..... , that said several blocks, lots, and parcels of real property in said district be assessed according to the assessment list for said improvement district as the same now remains in the office of the recorder or city clerk, and that .... percent of the assessment of each of said blocks, lots, and parcels shall be collected by the County Collector on or before the ..... day of ....., and ..... percent of the assessment shall be collected with the first installment of general taxes becoming due more than five (5) months thereafter, and annually thereafter, with the first installment of general taxes until the whole of said local assessment shall be paid."

**History.** Acts 1881, No. 84, § 5, p. 161; 1899, No. 183, § 7, p. 323; 1901, No. 143, § 5, p. 264; C. & M. Dig., § 5667; Pope's Dig., § 7305; Acts 1949, No. 195, § 2; 1969, No. 290, § 3; 1975, No. 224, § 1; A.S.A. 1947, § 20-413.

**Publisher's Notes.** The 1949 amendment to this section does not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102, 14-90-103.

### CASE NOTES

**Cited:** *McAllister v. Forrest City St. Imp. Dist. No. 11*, 274 Ark. 372, 626 S.W.2d 194 (1981).

**14-90-803. Publication of ordinance.**

Within thirty (30) days after the passage of the ordinance mentioned in § 14-90-801, the recorder or city clerk shall publish a copy of it in some newspaper published and having a bona fide circulation in the town or city for one (1) time; or if no newspaper is published in the city or town, then in some newspaper published in the county; and, if no newspaper is published in the county, then by posting in at least ten (10) conspicuous places in the city or town.

**History.** Acts 1881, No. 84, § 6, p. 161; § 5668; Acts 1929, No. 64, § 13; Pope's 1899, No. 183, § 8, p. 323; 1901, No. 143, Dig., § 7307; A.S.A. 1947, § 20-416. § 6, p. 264; 1913, No. 5, § 2; C. & M. Dig.,

**CASE NOTES****Construction.**

The provisions of this section are mandatory. Gibson v. Hoxie, 110 Ark. 544, 162 S.W. 568 (1913).

**Cited:** Burris v. City of Little Rock, 941 F.2d 717 (8th Cir. 1991).

**14-90-804. Contesting payment.**

(a) Within thirty (30) days after publication as prescribed in § 14-90-803, the municipal improvement district or any property owner may bring suit in the chancery court of the county for the purpose of correcting or invalidating the assessment.

(b) If the suit is not brought within that time, all objections to the creation of the district or the validity of the assessment shall be forever barred and precluded.

**History.** Acts 1881, No. 84, § 6, p. 161; § 5668; Acts 1929, No. 64, § 13; Pope's 1899, No. 183, § 8, p. 323; 1901, No. 143, Dig., § 7307; A.S.A. 1947, § 20-416. § 6, p. 264; 1913, No. 5, § 2; C. & M. Dig.,

**CASE NOTES****ANALYSIS**

Constitutionality.

In general.

Construction.

Appeals.

Collateral attack.

Direct attack.

Federal jurisdiction.

Limitation of actions.

Pleadings.

**Constitutionality.**

The fact that owners made a mistake in valuing their property and consequently in failing to object to that assessment does not make this a governmental taking; the right of the property owner to make a

direct attack on the assessment satisfies the due process requirements of the Constitution. Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis, 315 Ark. 353, 868 S.W.2d 73 (1993).

**In General.**

This section gives a reasonable opportunity to be heard. Board of Imp. Dist. No. 5 v. Offenhauser, 84 Ark. 257, 105 S.W. 265 (1907); Board of Imp. v. Pollard, 98 Ark. 543, 136 S.W. 957 (1911).

**Construction.**

The provisions of this section are mandatory. Gibson v. Hoxie, 110 Ark. 544, 162 S.W. 568 (1913).

If school property was not benefited by an improvement, the directors of the



school district could have appealed the finding of the assessors to the city council for a hearing de novo and then have had its assessment corrected by applying to the chancery court within 30 days after publication of the city ordinance confirming the assessments, and in the absence of a showing that these procedures were successfully followed, it must be presumed that the school property was benefited. *Rainwater v. Haynes*, 244 Ark. 1191, 428 S.W.2d 254 (1968).

### Appeals.

Where assessments were found excessive as to specific property and collection of benefits permanently enjoined, case was remanded since trial court was in error in not determining the correct benefits to be assessed against the property. *Paving Imp. Dist. No. 12 v. Brooks*, 222 Ark. 227, 258 S.W.2d 233 (1953).

### Collateral Attack.

The establishment of an improvement district and the assessment of benefits are subject to collateral attack only when they appear on their face to be demonstrably erroneous. *Davidson v. Sewer Imp. Dist.*, 182 Ark. 741, 32 S.W.2d 1062 (1930).

Action to set aside assessment of benefits for street improvement commenced more than 30 days after notice of the filing of the assessment was a collateral attack and not maintainable. *Wood v. Tobin*, 193 Ark. 964, 104 S.W.2d 203 (1937).

If no objection was made to the regularity of the assessment of benefits within the statutory period, no such objection could be made by the city curb and gutter district in an action by the trustee to enforce payment of the district's bonds. *Curb & Gutter Dist. No. 37 v. Parrish*, 110 F.2d 902 (8th Cir. 1940).

A municipal improvement district can be collaterally attacked even after the 30-day limitation has expired if fraud or demonstrable mistake can be shown. *McAllister v. Forrest City St. Imp. Dist.*, No. 11, 274 Ark. 372, 626 S.W.2d 194 (1981).

An improvement district's assessment of benefits is subject to collateral attack, after the period for direct attack has run, in certain limited circumstances; a collateral attack can prevail only in the event the property owner can show that there was fraud or demonstrable error in the

original assessment of the benefits. *Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis*, 315 Ark. 353, 868 S.W.2d 73 (1993).

The chancellor erred in going outside of the face of the record of the proceedings that created the district to find extraneous evidence of demonstrable error in the assessment of benefits on collateral attack. *Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis*, 315 Ark. 353, 868 S.W.2d 73 (1993).

### Direct Attack.

A suit by property owners to set aside an assessment brought within the designated time constitutes a direct attack on the assessment. *Kelley Trust Co. v. Paving Dist. No. 46*, 184 Ark. 408, 43 S.W.2d 71 (1931).

When the direct attack, one within 30 days, relates to the excessiveness of the assessments on specific property, it is for the purpose of correcting the assessment. *Paving Imp. Dist. No. 12 v. Brooks*, 222 Ark. 227, 258 S.W.2d 233 (1953).

When a direct attack, one made in 30 days, is against all of the assessments in the improvement district, then the chancery court, if it sustains the attack, necessarily sets aside all the assessed benefits. *Paving Imp. Dist. No. 12 v. Brooks*, 222 Ark. 227, 258 S.W.2d 233 (1953).

The assessment of benefits of a municipal improvement district can be attacked directly or, in limited circumstances, collaterally; in order to directly attack an assessment of benefits, a property owner must institute an action to correct or invalidate the assessment within 30 days of its publication. *Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis*, 315 Ark. 353, 868 S.W.2d 73 (1993).

Where plaintiffs did not file a direct attack within 30 days of the publication of the assessment, they were barred from directly attacking the assessment of benefits. *Maumelle Blvd. Water & Sewer Dist. No. 1 v. Davis*, 315 Ark. 353, 868 S.W.2d 73 (1993).

### Federal Jurisdiction.

In an action to enjoin the assessment and collection of taxes, and where the plaintiffs had a plain, speedy, and efficient remedy in the Arkansas courts under this section, § 14-90-501, § 16-111-103, and § 16-113-306, the Tax Injunction Act, 28

U.S.C. § 1341, barred federal jurisdiction. *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

### Limitation of Actions.

Suits contesting assessments must be brought within 30 days. *Ahern v. Board of Imp.*, 69 Ark. 68, 61 S.W. 575 (1901); *Burris v. Board of Sewer Imp. Dist. No. 1*, 134 Ark. 10, 203 S.W. 20 (1918); *Missouri Pac. R.R. v. Waterworks Imp. Dist. No. 1*, 134 Ark. 315, 203 S.W. 696 (1918); *Davidson v. Sewer Imp. Dist.*, 182 Ark. 741, 32 S.W.2d 1062 (1930).

Suits not brought within time prescribed held barred. *Webster v. Ferguson*, 95 Ark. 575, 130 S.W. 513 (1910); *Ingram v. Thames*, 150 Ark. 443, 234 S.W. 629 (1921); *Thomas v. Street Imp. Dist. No. 296*, 158 Ark. 187, 249 S.W. 590 (1923); *Carnahan v. City of Fayetteville*, 175 Ark. 405, 1 S.W.2d 10 (1927); *Williams v. Sewer Imp. Dist. No. 86*, 180 Ark. 510, 22 S.W.2d 405 (1929); *Yates v. Phillips*, 180 Ark. 709,

22 S.W.2d 559 (1929); *Missouri Pac. R.R. v. Sewer Imp. Dist. No. 2*, 33 F.2d 566 (8th Cir. 1929); *Lafin v. Board of Comm'rs*, 205 Ark. 24, 166 S.W.2d 653 (1942); *Ray v. City of Mt. Home*, 228 Ark. 885, 311 S.W.2d 163 (1958).

### Pleadings.

The plaintiff in a suit attacking the validity of an assessment in an improvement district was properly required to amend his complaint by stating when the ordinance was passed. *Boles v. Kelley*, 90 Ark. 29, 117 S.W. 1073 (1909).

After the expiration of the 30-day period for attacking improvement district ordinances, third persons who were not parties to the action previously instituted for the purpose of attacking an assessment can become party plaintiffs by adopting the pleadings of the original plaintiffs. *Meyer v. Board of Imp. Paving Dist.*, 148 Ark. 623, 231 S.W. 12 (1921).

## 14-90-805. Preference of assessment.

(a) An assessment shall be a charge and a lien against all the real property in a municipal improvement district from the date of an ordinance and shall be entitled to preference over all judgments, executions, encumbrances, or liens whenever created.

(b) The lien shall continue until the local assessment, including any penalty and costs that may accrue thereon, shall be paid. Provided, however, with the prior written approval of the board of improvement, the county clerk shall release from the lien of any assessment any lot, block, or tract with respect to which the assessment shall have been paid or prepaid.

(c) As between grantor and grantee, all payments not due at the date of the transfer of the real property shall be payable by the grantee.

**History.** Acts 1881, No. 84, § 5, p. 161; 1899, No. 183, § 7, p. 323; 1901, No. 143, § 5, p. 264; C. & M. Dig., § 5667; Pope's

Dig., § 7306; A.S.A. 1947, § 20-414; Acts 1991, No. 504, § 1.

## CASE NOTES

### ANALYSIS

In general.

Continuing lien.

Grantor and grantee.

Lien on all real property.

Limitation of actions.

### In General.

Assessments for a local improvement are a charge and lien entitled to prefer-

ence against the real property in the district from the date of the ordinance levying the assessment, which shall continue until the assessment shall be paid. *Hudgins v. Schultice*, 118 Ark. 139, 175 S.W. 526 (1915).

### Continuing Lien.

Improvement district can only release its lien upon full payment of all assess-

ments against the property involved. *Lueken v. Burch*, 214 Ark. 921, 219 S.W.2d 235 (1949).

It was held proper to require commissioners of improvement district to collect all delinquent assessments with interest with notice that such delinquencies were to be paid within 90 days in order to redeem property, since liability for assessments continues. *Whitaker & Co. v. Sewer Imp. Dist. No. 1*, 229 Ark. 697, 318 S.W.2d 831 (1958).

#### **Grantor and Grantee.**

A local assessment is not a "tax" within an exception in a covenant of warranty of the taxes for a certain year. *Sanders v. Brown*, 65 Ark. 498, 47 S.W. 461 (1898).

#### **Lien on All Real Property.**

A municipal improvement district has lien for delinquent assessments on buildings on the lot as well as the lot itself. *City of Eureka Springs v. Banks*, 206 Ark. 289, 174 S.W.2d 947 (1943).

#### **Limitation of Actions.**

Where street improvement district foreclosed its lien and sold property and sewer improvement district foreclosed its lien upon the same property and sold its interest, the respective purchasers from the two districts were not tenants in common, but divided fund on sale of property in ratio to amount of their respective liens upon the property. *Sanders v. Mhoon*, 214 Ark. 589, 217 S.W.2d 349 (1949).

Statute of limitations does not run against right of improvement district to foreclose its lien. *Lueken v. Burch*, 214 Ark. 921, 219 S.W.2d 235 (1949).

Mortgagee held subrogated to rights of improvement district against which statute of limitations did not run. *Lueken v. Burch*, 214 Ark. 921, 219 S.W.2d 235 (1949).

**Cited:** *Burris v. City of Little Rock*, 941 F.2d 717 (8th Cir. 1991).

### **SUBCHAPTER 9 — COLLECTION OF ASSESSMENTS**

#### **SECTION.**

- 14-90-901. Penalty — Damages.
- 14-90-902. Copy of assessments delivered to collector.
- 14-90-903. Notice for collection of assessment.
- 14-90-904. First annual special assessment.
- 14-90-905. Delinquent first annual assessments.
- 14-90-906. Filing with county clerk — Extensions.
- 14-90-907. Subsequent annual installments.

#### **SECTION.**

- 14-90-908. Delinquent annual installments.
- 14-90-909. Delinquent penalty.
- 14-90-910. Redemption of delinquent lands.
- 14-90-911. Proceedings before filing delinquency suit.
- 14-90-912. Fees for filing delinquencies.
- 14-90-913. Fees for extension of annual installments.
- 14-90-914. Deputy clerks.
- 14-90-915. Deputy collectors.
- 14-90-916. Payments by collector.

**Cross References.** Payment of improvement district taxes with bonds of district, § 14-86-803.

**Effective Dates.** Acts 1897, No. 16, § 5: effective on passage.

Acts 1951, No. 234, § 3: Mar. 6, 1951. Emergency clause provided: "Whereas Collectors are having great difficulty in securing deputy hire to prepare tax books on Municipal Improvement Districts an emergency is hereby declared to exist and this act shall be in full force and effect upon and after its passage and approval."

Acts 1953, No. 39, § 3: Feb. 6, 1953. Emergency clause provided: "Whereas, Collectors are having great difficulty in securing deputy hire to prepare tax books on Municipal Improvement Districts an emergency is hereby declared to exist and this Act shall be in full force and effect upon and after its passage and approval."

Acts 1957, No. 332, §§ 2, 3: Jan. 1, 1957. Emergency clause provided: "It is hereby determined by the General Assembly that the allowance for deputy hire by County Clerks and Tax Collectors in ex-



tending and collecting improvement district taxes is wholly inadequate and that the immediate passage of this Act is necessary in order to correct said condition. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved March 27, 1957.

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### 14-90-901. Penalty — Damages.

(a)(1) Any county tax collector who fails to make payment to the county treasurer within the time prescribed by §§ 14-90-904 and 14-90-907, or who fails to certify the delinquent list to the clerk of the chancery court within the time prescribed by §§ 14-90-905 and 14-90-908, shall be guilty of a misdemeanor and shall be fined in the sum of ten dollars (\$10.00) for each offense.

(2) Each day intervening between the time fixed for making the payment or filing the delinquent list and the time the payment is made or the delinquent list is filed shall be considered a separate offense.

(b) The municipal improvement district may recover from the collector and his bondsmen all damages sustained by reason of his noncompliance with the provisions of this act.

**History.** Acts 1949, No. 195, § 10; A.S.A. 1947, § 20-418.6.

**Publisher's Notes.** This section does not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102, 14-90-103.

**Meaning of "this act".** Acts 1949, No. 195, codified as §§ 14-88-401, 14-88-404, 14-90-102, 14-90-801, 14-90-802, 14-90-901 — 14-90-915, 14-90-1002, 14-90-1107, 14-90-1301, 14-90-1303, 14-90-1405, and 14-90-1406.

### 14-90-902. Copy of assessments delivered to collector.

Within forty (40) days after the passage of a municipal improvement district assessment ordinance, unless the time is extended by the city or town council, the city clerk or town recorder shall deliver to the county tax collector a certified copy of the assessment of benefits containing a description of the blocks, lots, and parcels of land in the district and the amount assessed on each, duly extended against each lot, block, or parcel of land and a certified copy of the ordinance fixing the percent to be collected each year.

**History.** Acts 1881, No. 84, § 7, p. 161; 1901, No. 143, § 7, p. 264; C. & M. Dig., § 5669; Pope's Dig., § 7308; Acts 1949, No. 195, § 3; A.S.A. 1947, § 20-417.

**Publisher's Notes.** The 1949 amendment to this section does not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102, 14-90-103.

Acts 1901, No. 143, § 8, provided: "That this act shall not apply to districts already formed unless a majority of the property owners in value shall apply to the city or town council to reorganize under this act, and shall be granted the privilege of doing so by ordinance duly passed."

CASE NOTES

**Failure to Deliver.**

Failure of city clerk to file annually the assessment list and warrant (now certified copy of ordinance) did not invalidate the lien. *Martin v. Board of Comm'rs*, 190 Ark. 747, 81 S.W.2d 414 (1935) (decision prior to 1949 amendment).

Board of commissioners of street improvement district of city was held not

prevented from bringing suit to enforce payment of delinquent assessment by reason that no warrant (now certified copy of ordinance) for the collection of assessments was ever issued by the city clerk or recorder. *Ingram v. Board of Comm'rs*, 197 Ark. 404, 123 S.W.2d 1074 (1938) (decision prior to 1949 amendment).

**14-90-903. Notice for collection of assessment.**

The county tax collector shall immediately upon the receipt of the certified copies of the municipal improvement district assessment of benefits and ordinance cause to be published in some newspaper published in the city a notice, which may be in the following form:

“Special Assessment

“The tax book for the collection of the first annual special assessment upon the real property in District No. .... for the purpose of ..... has been placed in my hands. All owners of real property lying in the District are required to pay their assessment to me within thirty (30) days from this date. If such payment is not made, action shall be commenced at the end of that time for the collection of said assessments and for legal penalties and costs.

“Given under my hand this .... day of ....., 19 .....

.....  
County Collector”

**History.** Acts 1881, No. 84, § 8, p. 161; C. & M. Dig., § 5671; Pope's Dig., § 7309; Acts 1949, No. 195, § 4; A.S.A. 1947, § 20-418.

**Publisher's Notes.** The 1949 amend-

ment to this section does not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102 and 14-90-103.

**14-90-904. First annual special assessment.**

(a) The tax collector shall collect that part of the municipal improvement district assessment extended against each lot, block, or parcel of land as specified in the certified copy of the assessment of benefits filed with him.

(b) Within thirty (30) days after the expiration of the time for paying the first annual assessment, the collector shall pay to the county treasurer, for the credit of the district, all moneys received by him in the payment of the first annual special assessment, less the fees allowed him by the provisions of § 14-90-913.

(c) The treasurer shall immediately pay all funds so paid to him by the collector to the board of improvement or other persons authorized to receive them, less the fees allowed by the provisions of § 14-90-913.

**History.** Acts 1949, No. 195, § 5; A.S.A. not apply to municipal improvement districts in existence prior to July 1, 1952. 1947, § 20-418.1.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

### **14-90-905. Delinquent first annual assessments.**

(a) Within thirty (30) days after the expiration of the period allowed for the payment of the municipal improvement district first annual special assessment, the county tax collector shall certify a list of the lands which have become delinquent by reason of the nonpayment of the first annual special assessment within the time specified under § 14-90-903.

(b) On the list, the collector shall show the name of the supposed owner as it appears on the tax books, describe the delinquent lot, block, or parcel of land, and indicate after each description the amount of the delinquent installment and the year in which that installment became due.

**History.** Acts 1949, No. 195, § 6; A.S.A. not apply to municipal improvement districts in existence prior to July 1, 1952. 1947, § 20-418.2.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

### **14-90-906. Filing with county clerk — Extensions.**

(a) At the same time the city clerk or town recorder delivers to the county tax collector a certified copy of the municipal improvement district assessment of benefits and a certified copy of the ordinance fixing the percent to be collected, he shall deliver like certified copies to the county clerk.

(b)(1) For the payment of the second and subsequent annual installments of the special assessment, the county clerk shall annually extend on the tax books against the property described in the assessment of benefits the percent designated in the ordinance for annual collection.

(2) In making this extension, the county clerk shall include the name of the district levying the assessment and shall indicate the amount of the annual installment to be collected in dollars and cents.

(c)(1) If the ordinance fixing the percent for annual collection is amended, then a certified copy of the amended ordinance shall be filed with the county clerk, and thereafter he shall extend the percent as fixed by the amended ordinance.

(2) Not more than twenty-five percent (25%) of the benefits may be extended in any one (1) year.

(d)(1) In the event the assessments as contained in the certified copy of the assessments filed in the office of the county clerk are in any manner revised, changed, or divided, then, upon receipt of a certificate executed by the board of improvement or its duly authorized agent, the county clerk shall have the right to change the assessment of benefits as filed in his office so as to correspond with the change, alteration, or division.



(2) When extending the annual installments in the future, the county clerk shall make the extensions in accordance with the change, alteration, or division.

**History.** Acts 1949, No. 195, § 7; A.S.A. 1947, § 20-418.3. not apply to municipal improvement districts in existence prior to July 1, 1952.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

#### **14-90-907. Subsequent annual installments.**

(a) For the second and subsequent annual installments of a municipal improvement district special assessment, the county tax collector shall collect on each lot, block, or parcel of land in the district that part of the assessment which is specified on the tax list as prepared by the county clerk, and this amount shall be collected along with the first installment of general taxes. However, the payment of the annual installment levied by the district shall not be a condition precedent to the payment of general taxes.

(b) After expiration of the time allowed by law for the payment of the first installment of general taxes, except as provided in § 14-90-908, the collector shall not collect any of the annual installments due the district.

(c) Within thirty (30) days after the expiration of the time for paying the first installment of general taxes, the collector shall pay to the county treasurer, for the credit of the district, all moneys received by him in the payment of the annual installments, less the fees allowed him by the provisions of § 14-90-913. However, in counties where collections are made in more than thirty-five (35) improvement districts, the collector shall have ninety (90) days in which to make payment to the treasurer.

(d) The treasurer shall immediately pay all funds so paid to him by the collector to the board of improvement or other persons authorized to receive them, less the fees allowed by the provisions of § 14-90-913.

(e) No disbursement shall be made to any district, however, until all fees due the county clerk for extending the annual installments have been paid.

(f) The payment of any subsequent annual installment after the property has become delinquent by reason of nonpayment of some past-due installment shall not be treated as a redemption and shall not affect the district's right to foreclose the delinquent installment.

**History.** Acts 1949, No. 195, § 8; A.S.A. 1947, § 20-418.4. not apply to municipal improvement districts in existence prior to July 1, 1952.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

**14-90-908. Delinquent annual installments.**

(a)(1) Within thirty (30) days after the expiration of the period allowed for the payment of the first installment of general taxes, the county tax collector shall certify a list of the lands which have become delinquent by reason of the nonpayment of the annual installments within the time specified under § 14-90-907. However, in counties where collections are made in more than thirty-five (35) improvement districts, the collector shall have ninety (90) days within which to make the certification.

(2) Separate lists shall be made for each district if the collector collects the annual installments of more than one (1) district.

(b) On that list, the collector shall show the name of the supposed owner as it appears on the tax books, describe the delinquent lot, block, or parcel of land, and indicate after each description the amount of the delinquent installment and the year in which the installment became due.

(c) Until such time as the collector has certified the list of the lands which have become delinquent, the collector may continue to receive payment of the delinquent annual taxes in the same manner and to the same effect as if the payment had been made prior to the time it became delinquent.

**History.** Acts 1949, No. 195, § 9; A.S.A. 1947, § 20-418.5. not apply to municipal improvement districts in existence prior to July 1, 1952.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

**14-90-909. Delinquent penalty.**

(a) Upon receipt of the municipal improvement district delinquent list as certified by the county tax collector, the collector shall mark the filing date and add to each delinquent installment a penalty of ten percent (10%).

(b) The collector shall then extend into the books or permanent record each tract, block, or parcel of land with the total of the annual installment, penalty, and costs, together with the name and address of each supposed owner of each tract, block, or parcel.

**History.** Acts 1949, No. 195, § 11; A.S.A. 1947, § 20-418.7. not apply to municipal improvement districts in existence prior to July 1, 1952.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

**14-90-910. Redemption of delinquent lands.**

(a)(1) Anyone desiring to redeem any delinquent lot, block, or parcel of land in a municipal improvement district shall pay to the clerk of the chancery court the annual installment, penalty, and costs. The clerk shall thereupon issue a redemption certificate in triplicate.

(2) The original shall be delivered to the person making the redemption, one (1) copy shall be furnished to the board of commissioners of the district, and one (1) copy shall be retained by the clerk.

(3) Opposite each tract appearing on the delinquent list, the clerk shall make a notation of the redemption and the date of the issuance of the certificate.

(b) The clerk shall, at monthly intervals, remit all taxes and penalties so collected to the board of the district or other person authorized to receive them.

**History.** Acts 1949, No. 195, § 12; See §§ 14-90-102 and 14-90-103.  
A.S.A. 1947, § 20-418.8.

**Publisher's Notes.** This section does not apply to municipal improvement districts in existence prior to July 1, 1952. The authority of the clerk of the chancery court may be transferred to the county tax collector pursuant to the authority of § 14-86-1001.

### 14-90-911. Proceedings before filing delinquency suit.

(a)(1) Before filing suit to collect delinquent municipal improvement district installments, the board of improvement shall obtain from the county tax collector or the officials having the delinquent list a certified list of all lots, blocks, and parcels of lands unredeemed.

(2) This list shall contain the description and the name of the supposed owner.

(3) For preparing the list, the clerk or person preparing it shall be entitled to ten cents (10¢) per tract, which shall be charged to the delinquent lands and collected from the owners when the lands are redeemed or charged as costs in the foreclosure suit.

(b)(1) The board shall submit the list to a competent abstractor, who shall compile a list of the names and last known addresses of the owners of record of all tracts included in the list prepared by the collector and shall certify as to the source of the addresses furnished by him.

(2) For these services, they may pay the abstractor such sum as may be reasonable and customary, not to exceed fifty cents (50¢) for each lot, block, or parcel.

(c) Certified copies of both lists shall be attached as exhibits to the complaint.

(d) Twenty (20) days prior to the filing of the complaint, the board shall cause to be mailed, by certified mail with return receipt requested, to each record owner as listed by the abstractor, a notice describing the delinquent property, specifying the year of delinquency and the amount or the approximate amount necessary for redemption, and informing the owner as to the date on which the suit will be filed.

(e)(1) As an exhibit to the complaint, there shall be attached an affidavit of the person who mailed the notices.

(2) The affidavit shall:

(A) Set forth a copy of the notice;



(B) Show:

- (i) The date the notices were mailed;
- (ii) The names and addresses of the last owners of record; and
- (iii) To whom the notices were mailed; and

(C) Contain a list of all notices which, because of insufficient addresses, were returned prior to the filing of the complaint.

(f) The amounts expended by the board in obtaining the list of the last owners of record from the abstractor and in sending the registered letters shall be certified by the board to the collector and shall be charged on a per tract basis to the delinquent lands and collected from the owners when the lands are redeemed, or charged as costs in the foreclosure suit.

**History.** Acts 1949, No. 195, § 17; A.S.A. 1947, § 20-418.13; Acts 1991, No. 92, § 1.

**Publisher's Notes.** This section ap-

plies to all municipal improvement districts whether created before or after its enactment. See §§ 14-90-102 and 14-90-103.

## CASE NOTES

### ANALYSIS

Notice.

Redemption.

#### Notice.

Where owners had no notice of any kind (either actual or by registered mail) that the foreclosure suit would be or was in fact filed in this case, the foreclosure decree, together with the deeds based thereon, would be subject to collateral attack. *Beck v. Rhoads*, 235 Ark. 619, 361 S.W.2d 545 (1962).

#### Redemption.

It was not necessary for owners to allege they paid the assessments on their land in suit brought by them to redeem the land, since this suit in no way says or intimates that a landowner can redeem only where he has paid his taxes; and it was not incumbent upon them to have a valid defense to the forfeiture action wherein the land was sold. *Beck v. Rhoads*, 235 Ark. 619, 361 S.W.2d 545 (1962).

## 14-90-912. Fees for filing delinquencies.

(a) The county tax collector, for his services in filing the delinquent list and extending the taxes, penalty, and costs, and in issuing the certificate of redemption, shall be entitled to the sum of twenty-five cents (25¢) per tract for each delinquency.

(b) This sum shall be added at the time the delinquent list is filed and shall be collected from the property owner when the delinquent property is redeemed.

(c) In the event the property is included in a foreclosure suit, the twenty-five cents (25¢) per tract shall be charged against the delinquent property, taxed as costs, and paid to the collector.

**History.** Acts 1949, No. 195, § 13; A.S.A. 1947, § 20-418.9.

**Publisher's Notes.** This section does

not apply to municipal improvement districts in existence prior to July 1, 1952. See §§ 14-90-102 and 14-90-103.

**14-90-913. Fees for extension of annual installments.**

(a) For services in extending the annual installments, the municipal improvement district shall pay the county clerk one and one-half percent (1½%) of the total amount extended.

(b) For services in collecting the annual installments, the district shall pay to the county tax collector one and three-eighths percent (1⅜%) of the amount collected by him, which he may withhold.

(c) For services in disbursing the moneys, the district shall pay the county treasurer one-eighth of one percent (⅛ of 1%) of the amount received by him from the collector, which he may withhold.

**History.** Acts 1949, No. 195, § 14; not apply to municipal improvement districts in existence prior to July 1, 1952. A.S.A. 1947, § 20-418.10.

**Publisher's Notes.** This section does See §§ 14-90-102 and 14-90-103.

**14-90-914. Deputy clerks.**

(a) County clerks are authorized to employ a deputy to do the additional work imposed by the terms of this act.

(b) The clerk may pay the deputy a salary up to the sum of three thousand three hundred dollars (\$3,300) per annum. However, the salary shall never exceed the receipts from the one and one-half percent (1½%) allowed the clerk by the provisions of § 14-90-913.

**History.** Acts 1949, No. 195, § 15; tricts in existence prior to July 1, 1952. 1957, No. 332, § 1; A.S.A. 1947, § 20-418.11. See §§ 14-90-102 and 14-90-103.

**Publisher's Notes.** This section does **Meaning of "this act".** See note to § 14-90-901. not apply to municipal improvement dis-

**14-90-915. Deputy collectors.**

(a) County tax collectors are authorized to employ one (1) deputy to do the additional work imposed by the terms of this act.

(b) The collector may pay the deputy a salary up to the sum of three thousand three hundred dollars (\$3,300) per annum. However, the salary shall never exceed the receipts from the one and three-eighths percent (1⅜%) allowed the collectors by the provisions of § 14-90-913.

**History.** Acts 1949, No. 195, § 16; not apply to municipal improvement districts in existence prior to July 1, 1952. 1951, No. 234, § 1; 1953, No. 39, § 1; 1957, No. 332, § 1; A.S.A. 1947, § 20-418.12. See §§ 14-90-102 and 14-90-103.

**Publisher's Notes.** This section does **Meaning of "this act".** See note to § 14-90-901.

**14-90-916. Payments by collector.**

The county tax collector shall pay over to the county treasurer, on the first day of each month, all moneys received by him, deducting therefrom his commission for his services, which shall not exceed three percent (3%), to be fixed by the board of improvements. He shall take duplicate receipts therefor, one (1) of which he shall file with the board.

**History.** Acts 1881, No. 84, § 12, p. 161; 1897, No. 16, § 3, p. 23; C. & M. Dig., § 5704; Pope's Dig., § 7343; A.S.A. 1947, § 20-419.

**Publisher's Notes.** As to the compensation of collectors in municipal improvement districts created after July 1, 1952, see § 14-90-913.

**SUBCHAPTER 10 — SUITS TO ENFORCE PAYMENT****SECTION.**

- 14-90-1001. Precedence of cases.
- 14-90-1002. Filing of complaint.
- 14-90-1003. Publication of notice.

**SECTION.**

- 14-90-1004. Party defendant.
- 14-90-1005. Joinder of parties.
- 14-90-1006. Decree.

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**Cross References.** Lien of district may be enforced notwithstanding tax sale to state, § 14-86-1601 et seq.

**Effective Dates.** Acts 1913, No. 125, § 9: approved Mar. 3, 1913. Emergency declared.

Acts 1937, No. 101, § 3: Feb. 17, 1937. Emergency clause provided: "Whereas, the owners of real property situated in Municipal Improvement Districts in the State of Arkansas, are now being required to pay exorbitant fees for procuring services in suits brought to enforce collection of delinquent assessments. And:

"Whereas, these fees have been, and are burdensome upon the owners of real prop-

erty whose lands are being foreclosed for the purpose of enforcing collection of the delinquent assessments. And:

"Whereas, there are now many suits about to be brought for the purpose of enforcing collection of such delinquent assessments by reason of which a large number of citizens of this State will be materially damaged in their property rights, an emergency is hereby declared, because of such fact, and this act being necessary for the immediate preservation of the public peace, health and safety, it shall become effective immediately upon its passage and approval."

**RESEARCH REFERENCES**

**Ark. L. Rev.** A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

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**14-90-1001. Precedence of cases.**

(a) For the purpose of taking every step in such suits as are referred to in this subchapter from the beginning to the end, the court shall be always open.

(b) All cases brought under this act shall have precedence of all other cases pending in the court and shall be decided within thirty (30) days after service of publication.



**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5681; Pope's Dig., § 7322; A.S.A. 1947, § 20-425.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-

90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

## CASE NOTES

**Cited:** Ferrell v. Massie, 150 Ark. 156, 233 S.W. 1083 (1921).

### 14-90-1002. Filing of complaint.

(a) A municipal board of improvement, within six (6) months after the delinquent list is prepared by the county tax collector, may file and prosecute a suit to collect the delinquent installments.

(b)(1) In the complaint, it shall only be necessary to allege that the lot, block, or parcel of land, describing it, was assessed and that the annual assessment, giving the amount and specifying the year for which levied, was not paid within the time required by law.

(2) It shall not be necessary to allege the steps taken by the municipal council, the board, or other officer.

(3) It shall conclude with the prayer that the delinquent property be charged with the installment in default, penalty, and costs and that it be condemned and sold in payment thereof.

(c) Any lot, block, or parcel of land which has been sold to the improvement district in a prior foreclosure suit and has not been redeemed shall not be included in any subsequent foreclosure suit.

(d) No exhibits other than those specified in this section need to be attached to the complaint.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., §§ 5674, 5675; Pope's Dig., §§ 7313, 7314; Acts 1949, No. 195, §§ 19, 20; A.S.A. 1947, §§ 20-422, 20-422.1.

**Publisher's Notes.** This section applies to all municipal improvement districts whether created before or after its

enactment. See §§ 14-90-102, 14-90-103.

The collection of delinquent improvement district taxes or assessments has been transferred to the county tax collector by § 14-86-1001.

**Cross References.** Certified copy of delinquent list filed with complaint, § 14-86-1208.

### 14-90-1003. Publication of notice.

(a) Notice of the pendency of a suit to collect delinquent municipal improvement district assessments shall be given by publication weekly for two (2) weeks before judgment shall be entered for the sale of the lands, in some newspaper published in the county where the suit is pending.

(b) The notice may be in the following form:

**"COMMISSIONERS OF IMPROVEMENT DISTRICTS VS. DELINQUENT LANDS.** All persons having a claim and interest in any of the following described lands are hereby notified that suit is pending in the Chancery Court in . . . . County, Arkansas, to enforce the collection of certain Improvement District Assessments on the following list of lands, the names of each supposed owner having been set opposite together with the amount of taxes due on each tract, (then shall follow a list of the owners with the descriptive list of delinquent lands, and the several amounts due thereon), all persons and corporations interested in said lands are hereby notified that they are required by law to appear and make defense to said suit, or the same will be taken as confessed and final judgment will be entered, directing the sale of said lands for the purpose of collecting said assessments, together with the penalty and cost allowed by law.

..... (Seal)  
Clerk of Said Court."

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5678; Acts 1937, No. 101, § 1; A.S.A. 1947, § 20-426.

#### CASE NOTES

##### **Constitutionality.**

The 1933 amendment of this section was held unconstitutional. *W. B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 55 S. Ct.

555, 79 L. Ed. 1298 (1935); *Hopkins v. Fields*, 202 Ark. 890, 154 S.W.2d 22 (1941).

#### **14-90-1004. Party defendant.**

In suits to foreclose the lien of assessments upon property in a municipal improvement district, the name of the last owner of the property as it appears in the recorder's office shall always be given as the owner and that party shall be made defendant, unless the board of improvement knows that some other party has acquired title, in which event the actual owner shall be made the defendant.

**History.** Acts 1913, No. 125, § 4; C. & M. Dig., § 5677; A.S.A. 1947, § 20-424.

#### **14-90-1005. Joinder of parties.**

It shall be no objection to any suit brought for the purpose of collecting delinquent municipal improvement district assessments that the lands of two (2) or more owners are joined in the same proceeding, and these suits may be brought against one (1) or more owners.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5676; A.S.A. 1947, § 20-423.

**14-90-1006. Decree.**

Under this subchapter, if the decree is in favor of the municipal board of improvement and for the condemnation of the land, it shall be for the penalty and costs of suit, as well as for the amount of the assessment.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5683; A.S.A. 1947, § 20-427.

**SUBCHAPTER 11 — SALE OF PROPERTY****SECTION.**

14-90-1101. Court order.  
14-90-1102. Rules for sales.  
14-90-1103. Payment.  
14-90-1104. Certificate of purchase.  
14-90-1105. Failure to pay bid.

**SECTION.**

14-90-1106. Failure to sell.  
14-90-1107. Sale to improvement district.  
14-90-1108. Compensation of commissioner.

**Publisher's Notes.** This subchapter, except § 14-90-1107, may be superseded pursuant to §§ 14-90-102, 14-90-103. See also note to § 14-90-1107.

**Cross References.** Purchaser entitled

to possession during redemption period, § 14-86-1501.

**Effective Dates.** Acts 1925, No. 91, § 3: effective on passage.

**14-90-1101. Court order.**

(a) In a suit to collect delinquent municipal improvement district assessments brought in the name of the board of improvement, the chancery court shall order, in its decree of condemnation, that if the sum adjudged shall not be paid within ten (10) days, the property shall be sold by a commissioner, appointed for that purpose, upon twenty (20) days' notice.

(b) Only so much of the property shall be sold as will pay the assessment, costs, and penalty, and no more.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5684; A.S.A. 1947, § 20-428.

**CASE NOTES****Constitutionality.**

The 1933 amendment of this section was held unconstitutional. *W. B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 55 S. Ct.

555, 79 L. Ed. 1298 (1935); *Hopkins v. Fields*, 202 Ark. 890, 154 S.W.2d 22 (1941).



**14-90-1102. Rules for sales.**

(a) All sales under this subchapter shall be for cash and to the highest legal bidder.

(b) If the sales are not completed on the first day, the commissioner shall continue the sales from day to day until completed.

(c) In other respects, these sales shall be governed by the rules and laws regulating other sales of land made under decrees in chancery, and with like notice.

**History.** Acts 1881, No. 84, § 25, p. 161; C. & M. Dig., § 5700; A.S.A. 1947, § 20-430.

**14-90-1103. Payment.**

(a) An amount bid at the sale of lands under this subchapter equal to the assessment, penalty, and costs shall be paid at the time of the sale, and the residue of the purchase money shall be paid into the chancery court.

(b) Within twenty (20) days after the period of redemption shall have expired, the court shall cause the assessment and penalty to be paid over to the municipal board of improvement.

**History.** Acts 1881, No. 84, § 24, p. 161; C. & M. Dig., § 5696; A.S.A. 1947, § 20-431.

**14-90-1104. Certificate of purchase.**

Upon a sale under this subchapter, the commissioner shall execute to the purchaser a certificate of purchase, in which shall be stated the whole sum paid by the purchaser.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5691; A.S.A. 1947, § 20-432.

**14-90-1105. Failure to pay bid.**

In making sales under this subchapter, if any bidder to whom any parcel of land shall be sold shall fail to pay his bid, the commissioner shall at once offer it again, and the bid of the delinquent bidder shall not be taken again at a sale.

**History.** Acts 1881, No. 84, § 25, p. 161; C. & M. Dig., § 5699; A.S.A. 1947, § 20-433.

**14-90-1106. Failure to sell.**

Should any of the lands fail to be sold under this subchapter for any reason, the chancery court may, from time to time, order them to be offered again for sale.

**History.** Acts 1881, No. 84, § 25, p. 161; C. & M. Dig., § 5701; A.S.A. 1947, § 20-434.

**14-90-1107. Sale to improvement district.**

(a) Municipal improvement districts may purchase lands sold under foreclosure decrees when there are no other bids equal to the delinquent installments, penalties, and costs.

(b) In the absence of bids, the commissioner making the sale, without bidding on the part of the district or its agent, shall sell the lands to the district for the full amount chargeable against the lands by the terms of the decree.

(c) The district may hold, sell, and convey all lands purchased at foreclosure sales.

**History.** Acts 1925, No. 91, § 1; Pope's Dig., § 7335; Acts 1949, No. 195, § 23; A.S.A. 1947, § 20-435.

**Publisher's Notes.** This section applies to all municipal improvement districts whether created before or after its enactment. See §§ 14-90-102, 14-90-103.

Acts 1925, No. 91, § 2, contained a

provision which read "provided that this act shall not apply to any property which shall have become delinquent or have been forfeited prior to the passage of this act."

**Cross References.** Lands forfeited to or bought by district for delinquent taxes, § 26-38-204.

**CASE NOTES****ANALYSIS**

Purpose.

Power of districts.

**Purpose.**

Where the sole object of the improvement district is to collect delinquent taxes, it may purchase the property, and the object of this section is to better accomplish that end. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

**Power of Districts.**

The power conferred on improvement districts by this section implies the power to accomplish the same result by a conveyance of the property by the owners free of other liens. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

**14-90-1108. Compensation of commissioner.**

For a sale of property under this subchapter, no allowance to the commissioner for his services shall exceed five dollars (\$5.00) for each lot, block, or part of a block of land sold and certificate made by him.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5685; Pope's Dig., § 7323; A.S.A. 1947, § 20-429.

## SUBCHAPTER 12 — APPEAL FROM DECREE OF SALE

## SECTION.

14-90-1201. Advancement of cause.

14-90-1202. Time to prosecute.

## SECTION.

14-90-1203. Filing of transcript.

14-90-1204. Decision of court.

### 14-90-1201. Advancement of cause.

If any appeal is taken from any decree ordering the sale of property to collect delinquent municipal improvement district assessments, the Supreme Court shall advance the cause on its docket and shall hear and decide the cause at as early a day as practicable.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5686; Pope's Dig., § 7324; A.S.A. 1947, § 20-436.

### CASE NOTES

## ANALYSIS

Constitutionality.  
Construction.

**Constitutionality.**

This section was repealed in 1933, but the act was declared unconstitutional. W.B. Worthen Co. ex rel. W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56, 55 S. Ct.

555, 79 L. Ed. 1298 (1935); Hopkins v. Fields, 202 Ark. 890, 154 S.W.2d 22 (1941).

**Construction.**

This section is mandatory with respect to the time for obtaining the appeal and filing the transcript. Crandell v. Harrison, 105 Ark. 110, 150 S.W. 560 (1912).

### 14-90-1202. Time to prosecute.

No appeal shall be prosecuted from any decree after the expiration of the twenty (20) days granted in § 14-90-1203 for filing the transcript in the clerk's office of the Supreme Court.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5689; Pope's Dig., § 7327; A.S.A. 1947, § 20-439.

### CASE NOTES

## ANALYSIS

Constitutionality.  
Construction.

**Constitutionality.**

This section was repealed in 1933, but the act was declared unconstitutional. W.B. Worthen Co. ex rel. W.B. Worthen Co. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298 (1935); Hopkins v. Fields, 202 Ark. 890, 154 S.W.2d 22 (1941).

**Construction.**

This section is mandatory, and when a transcript has not been filed on time, the appeal must be dismissed. Miller v. White, 108 Ark. 253, 157 S.W. 934 (1913).

**Cited:** Osborne v. Board of Imp., 94 Ark. 563, 128 S.W. 357 (1910); Fulmer v. Board of Comm'rs, 286 Ark. 419, 692 S.W.2d 246 (1985).



14-90-1203. Filing of transcript.

- (a) In an appeal under this subchapter, the transcript shall be filed in the office of the clerk of the Supreme Court within twenty (20) days after the rendering of the decree appealed from.
- (b) In taking an appeal, the appellant shall only include in the transcript so much of the record as relates to his own lands.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., §§ 5687, 5688; Pope's Dig., §§ 7325, 7326; A.S.A. 1947, §§ 20-437, 20-438.

CASE NOTES

ANALYSIS

Constitutionality.  
Construction.  
Applicability.

**Constitutionality.**

This section was repealed in 1933, but the act was declared unconstitutional. *W. B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298 (1935); *Hopkins v. Fields*, 202 Ark. 890, 154 S.W.2d 22 (1941).

**Construction.**

This section is mandatory, and when an

appeal has not been filed on time, the appeal must be dismissed. *Miller v. White*, 108 Ark. 253, 157 S.W. 934 (1913).

**Applicability.**

This section applies in case of an appeal from a decree although the defendant by cross-claim seeks to attack the validity of the improvement district or of the assessments. *Ferrell v. Massie*, 150 Ark. 156, 233 S.W. 1083 (1921).

**Cited:** *Fulmer v. Board of Comm'rs*, 286 Ark. 419, 692 S.W.2d 246 (1985).

14-90-1204. Decision of court.

In an appeal under this subchapter, the Supreme Court shall either affirm or reverse the decree appealed from, shall render such a decree as should have been rendered by the lower court, or shall remand the cause to the inferior court without delay.

**History.** Acts 1881, No. 84, § 10, p. 161; C. & M. Dig., § 5690; Pope's Dig., § 7328; A.S.A. 1947, § 20-440.

SUBCHAPTER 13 — REDEMPTION OF PROPERTY

SECTION.

- 14-90-1301. Right to redeem.
- 14-90-1302. Waiver of right.

SECTION.

- 14-90-1303. Deed after expiration of redemption period.

**Effective Dates.** Acts 1995, No. 801, § 6: Mar. 27, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas that the time period for redemption of real property with respect to municipal improvement districts gener-

ally, being five (5) years, renders the property unsalable by foreclosing improvement districts; that this results in financial distress for the district and is unfair to the owners of property not delinquent in their assessments; and that these conditions must be relieved immedi-

ately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of

the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

### 14-90-1301. Right to redeem.

The owner or person having an interest in any real property sold for delinquent assessment installments due municipal improvement districts shall have the right to redeem the property by paying to the purchaser or his assignee the sale price plus interest from the date of sale to the date of redemption at the rate of six percent (6%) per annum within the periods that follow:

(1) In the case of foreclosure proceedings commenced after May 1, 1995, two (2) years following the foreclosure sale; or

(2)(A) In all other cases, the later of:

(i) Two (2) years after the date of foreclosure; or

(ii) December 1, 1996.

(B) Provided, however, in the case of the redemption periods in subdivision (2) (A) of this section, the period shall not be less than one (1) year following notice sent by registered or certified mail to the owner and the holder of any interest of record in such real property, at the address set forth in the real property records or tax records with respect to such real property, advising the owner and holder of the date of expiration of the applicable redemption period.

**History.** Acts 1949, No. 195, § 21; A.S.A. 1947, § 20-446.1; Acts 1995, No. 801, § 1.

**Publisher's Notes.** This section applies to all municipal improvement districts whether created before or after its enactment. See §§ 14-90-102, 14-90-103.

**Amendments.** The 1995 amendment

substituted "owner or person having an interest in any real property" for "owner of any land" and "the property by paying to the purchaser" for "at any time within five (5) years from the date of sale, by paying the purchaser" and added "within the periods that follow" in the first paragraph; and added (1) and (2).

### CASE NOTES

#### ANALYSIS

Equitable circumstances.  
Notice.

#### Equitable Circumstances.

The fact that this section does not allow redemption as a matter of right after five years does not make it a federal constitutional violation to grant a privilege of redemption beyond the five years as a matter of judicial grace in a situation of equitable circumstances, where no vested legal right is thereby impaired. *Dickie v. Sewer Imp. Dist. No. 1*, 328 F.2d 296 (8th Cir.), cert. denied, 379 U.S. 821, 85 S. Ct. 42, 13 L. Ed. 2d 32 (1964).

#### Notice.

This section is not construed to mean the owner could not redeem after five years where he was not given notice of the foreclosure suit, as any other interpretation would seem to nullify the express purpose for which it was enacted, that of providing more protection for the owners of property located within municipal improvement districts. *Beck v. Rhoads*, 235 Ark. 619, 361 S.W.2d 545 (1962).

Where owners had no notice of any kind (either actual or by registered mail) that the foreclosure suit would be or was in fact filed, the foreclosure decree, together with the deeds based thereon, would be subject

to collateral attack. *Beck v. Rhoads*, 235 Ark. 619, 361 S.W.2d 545 (1962).

**14-90-1302. Waiver of right.**

(a)(1) If the owner of property sold to collect delinquent municipal improvement district assessments shall come into court at any time within the period allowed for redemption and shall waive his right of redemption, the court shall order the purchaser to pay the amount that may be going to him within twenty (20) days after service of a copy of the order made on him to that effect.

(2) The payment shall be made into court for the benefit of the owner.

(b) On failure of the purchaser to make the payment, the court shall make an order setting aside the sale and restoring the property to the owner free from all claims of the purchaser, upon payment into court for his use of the amount of the assessment, penalty, and costs, and twenty percent (20%) thereon, which shall be paid over to the purchaser on his application.

(c)(1) In case the certificate of purchase shall have been assigned, the notice provided for in this section may be served on the assignee holding it.

(2) In case the owner of the certificate of purchase shall not be known and that fact shall be made apparent to the court, the court shall cause publication to be made of a copy of the order in some newspaper published in the city for two (2) insertions. The last insertion shall be at least two (2) weeks before the making of the order contemplated in this section.

**History.** Acts 1881, No. 84, § 24, p. 161; C. & M. Dig., §§ 5697, 5698; A.S.A. 1947, § 20-449.

**14-90-1303. Deed after expiration of redemption period.**

(a)(1) If any lands sold under this act shall not be redeemed within the time allowed in it, the court in which the suit is brought for the condemnation thereof shall direct a commissioner to execute a deed to the purchaser or his assignee, which may be in the following words:

“Know all men by these presents, That whereas, a decree was rendered in the ..... court of the ..... county on the ..... day of ....., 19...., condemning to be sold for the nonpayment of assessment for local improvement, certain lots (or blocks, as the case may be), which are described as follows: ....., lying in the city of ....., and whereas, they were duly sold by a commissioner appointed by said court for that purpose in said cause in which the board of improvement No. ...., for the purpose of ....., was plaintiff and ..... was defendant, and were bought by ..... for the following sums respectively, which sums were by him duly paid; and whereas, the time allowed for the redemption of said lands has expired, and I, ....., as commissioner, appointed by said court in said cause, am directed by said court to execute a deed,



conveying said lands to him; therefore, in consideration of the premises, I, the said ....., do hereby grant and convey unto the said ....., the lands above described. Witness my hand this ..... day of ....., 19....”

(2) The deed shall be executed by the commissioner in the same manner as other deeds are required to be executed in cases of sale made under decrees of courts of chancery.

(b)(1) The deed shall be prima facie evidence that all things were done that were necessary to make good the sale and conveyance for the transfer of an estate in fee simple.

(2)(A) Unless the tax has in fact been paid, irregularities which could have been corrected by appeal shall not suffice to impair the validity of the commissioner's deed.

(B) If the name of the owner of record is used, failure to use the name of the true owner shall not impair the validity of the proceeding of the commissioner's deed.

(c) The deed mentioned in this section shall only be made on the filing of the certificate of purchase in the court unless proof of the loss of that certificate shall be made to the satisfaction of the court.

**History.** Acts 1881, No. 84, §§ 22, 23, p. 161; C. & M. Dig., §§ 5692-5695; Pope's Dig., § 7334; Acts 1949, No. 195, § 22; A.S.A. 1947, §§ 20-450, 20-451.

**Publisher's Notes.** This section applies to all municipal improvement districts whether created before or after its enactment. See §§ 14-90-102, 14-90-103.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-

90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

Acts 1949, No. 195, codified as §§ 14-88-401, 14-88-404, 14-90-102, 14-90-801, 14-90-802, 14-90-901 — 14-90-915, 14-90-1002, 14-90-1107, 14-90-1301, 14-90-1303, 14-90-1405, and 14-90-1406.

**Cross References.** Collection of delinquent improvement district taxes or assessments transferred to county tax collector, § 14-86-1001.

## CASE NOTES

### Irregularities.

When a decree condemning land to be sold for delinquent assessments failed to recite that 10 days be allowed before the sale shall be made, the irregularity was cured when the commissioner waited 10 days before advertising the land for sale under the decree. *Beasley v. Bratcher*, 114 Ark. 512, 170 S.W. 249 (1914).

After the confirmation of a sale has been made by order of the court, all defects and irregularities in the conduct of the sale are cured and every presumption will be indulged in favor of its fairness and regularity. *Cassady v. Norris*, 118 Ark. 449, 177 S.W. 10 (1915).

**SUBCHAPTER 14 — SUPPLEMENTARY FORECLOSURE PROCEEDINGS**

## SECTION.

- 14-90-1401. Purpose.
- 14-90-1402. Construction.
- 14-90-1403. List of delinquent property.
- 14-90-1404. Permanent record of delinquencies.
- 14-90-1405. Jurisdiction of court.
- 14-90-1406. Proceedings in rem.

## SECTION.

- 14-90-1407. Property included in suit.
- 14-90-1408. Publication of notice.
- 14-90-1409. Trial, decree, and sale generally.
- 14-90-1410. Sale to plaintiff.
- 14-90-1411. Redemption of property.

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**Effective Dates.** Acts 1937, No. 207, § 10: approved Mar. 8, 1937. Emergency clause provided: "Whereas, the present method of foreclosing liens for past due assessments in municipal improvement districts is unduly costly and expensive to the property owners and to the Districts, an emergency is hereby declared, and this act is necessary for the preservation of the public peace, health and safety; an emergency is hereby declared to exist and this act shall take effect and be in full force from and after its passage."

Acts 1939, No. 130, § 2: approved Feb.

24, 1939. Emergency clause provided: "It appearing that numerous suits ought to be brought to foreclose the tax lien of improvement districts, and the expense of bringing them, on account of the requirement of publication for four weeks, has been expensive, and for this reason there is a disturbed condition which should be immediately remedied, and this act being necessary for the immediate preservation of public peace, health and safety, an emergency is hereby declared and this act shall be in full force and effect from and after its passage."

**RESEARCH REFERENCES**

**Ark. L. Rev.** A Commentary on State and Improvement District Tax Sales, 8 Ark. L. Rev. 386.

**14-90-1401. Purpose.**

This subchapter is intended to supplement existing laws relative to foreclosure of assessment liens in municipal improvement districts.

**History.** Acts 1937, No. 207, § 8; Pope's Dig., § 7320; A.S.A. 1947, § 20-447.

**14-90-1402. Construction.**

This subchapter is to be cumulative and shall repeal only those statutes in direct conflict with it.

**History.** Acts 1937, No. 207, § 9; Pope's Dig., § 7321; A.S.A. 1947, § 20-448.

### 14-90-1403. List of delinquent property.

If any assessment, or annual installment thereof, levied by a municipal improvement district shall not be paid within the time provided by the city ordinance approving the assessment, the county tax collector shall add thereto a penalty of ten percent (10%) and shall at once return a list of all the property within the district on which the assessment or installment has not been paid to the board of improvement as delinquent.

**History.** Acts 1937, No. 207, § 1; Pope's Dig., § 7311; A.S.A. 1947, § 20-421.

**Cross References.** Filing of delinquent lists in counties having in excess of

75,000 inhabitants, § 14-86-1206.

Remission of delinquent penalties in excess of 10 percent, § 14-86-1002.

### CASE NOTES

#### ANALYSIS

Interest and attorneys' fees.  
Penalty.

#### Interest and Attorneys' Fees.

Where assessments for municipal improvement district remained delinquent at the time of foreclosure, chancery court could properly adjudge interest and attorney's fee. *City of Eureka Springs v. Banks*, 206 Ark. 289, 174 S.W.2d 947 (1943).

#### Penalty.

The chancery court has no discretion as to the penalty prescribed in this section. *Board of Comm'rs v. Delinquent Lands*, 195 Ark. 681, 113 S.W.2d 730 (1938).

**Cited:** *Schuman v. Cherry*, 215 Ark. 342, 220 S.W.2d 817 (1949).

### 14-90-1404. Permanent record of delinquencies.

(a)(1) When the suit with the delinquent list is filed with the county tax collector under this subchapter, the delinquent list of property shall be copied into a permanent record of delinquent lands.

(2) The collector shall receive, as part of his costs, the sum of ten cents (10¢) for each separate line of description of property. This amount shall be paid by the plaintiff when the suit is filed and shall be taxed and collected as part of the cost and refunded to the plaintiff.

(b)(1) On the record of delinquent lands, the collector shall note all redemptions made prior to the date of sale.

(2) The collector shall also note on the record the redemption of lands after the sale, first recording after the description of each piece of property to whom it was sold or if sold to the plaintiff.

**History.** Acts 1937, No. 207, § 7; Pope's Dig., § 7319; A.S.A. 1947, § 20-442.



## CASE NOTES

**Failure to File.**

Failure of clerk to file and record delinquent list is not jurisdictional; hence such failure by the clerk did not make the sale

under foreclosure action by drainage district void. *Rouse v. Teeter*, 214 Ark. 488, 216 S.W.2d 869 (1948).

**14-90-1405. Jurisdiction of court.**

(a) Under this subchapter, the chancery court shall have the jurisdiction of suits brought to collect delinquent installments.

(b)(1) The court shall enter a decree against the lots, blocks, or parcels of land for the amount of the delinquent installments, together with penalty, attorney's fee, and costs.

(2) The decree shall provide for the sale of the delinquent lands by a commissioner, for cash, after advertisement, as specified in § 14-90-1408.

**History.** Acts 1937, No. 207, § 2; Pope's Dig., § 7312; Acts 1949, No. 195, § 18; A.S.A. 1947, § 20-441.

**Publisher's Notes.** This section ap-

plies to all municipal improvement districts whether created before or after its enactment. See §§ 14-90-102, 14-90-103.

## CASE NOTES

## ANALYSIS

Constitutionality.

Purpose.

Applicability.

Entry of decree.

—Delinquent assessments.

—Penalty, attorney's fee, and costs.

Statute of limitations.

**Constitutionality.**

This section is not violative of the due process clause, U. S. Const. Amend. 14, because it provides for constructive service. *Stith v. Pinkert*, 217 Ark. 871, 234 S.W.2d 45 (1950), appeal dismissed, 341 U.S. 901, 71 S. Ct. 613, 95 L. Ed. 1341 (1951).

**Purpose.**

The purpose of this section is to aid the improvement district in collecting its delinquent taxes, and the express power conferred on the district to acquire property by foreclosure of its tax lien necessarily implies the power to accomplish the same result by a conveyance from the property owner, free of other liens. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

**Applicability.**

This section is not retroactive and was held not applicable to proceeding pending at the time it was enacted. *Cutsinger v. Strang*, 203 Ark. 699, 158 S.W.2d 669 (1942).

This section was held applicable to pending litigation on its effective date in that it only applies to or affects remedies in procedure. *Stith v. Pinkert*, 217 Ark. 871, 234 S.W.2d 45 (1950), appeal dismissed, 341 U.S. 901, 71 S. Ct. 613, 95 L. Ed. 1341 (1951).

**Entry of Decree.**

This section does not make judgment mandatory except as to delinquent assessments and penalties at the time the matter is addressed to the court for decree. *Board of Comm'rs v. Delinquent Lands*, 195 Ark. 681, 113 S.W.2d 730 (1938).

**—Delinquent Assessments.**

The board of commissioners of a municipal improvement district is the proper party to bring suit against property owner for delinquent assessment against property. *Beloate v. Street Imp. Dist. No. 2*, 203 Ark. 899, 159 S.W.2d 451 (1942).

**—Penalty, Attorney's Fee, and Costs.**

Chancellor has no discretion as to penalty provided by § 14-90-1403. Board of

*Comm'r's v. Delinquent Lands*, 195 Ark. 681, 113 S.W.2d 730 (1938).

A requisite to a valid collection of attorney fees is that an order be issued, directing that such charge be extended against the particular tract of land included in the notice, and before a taxpayer can be required to pay such fee, there must be judgment to that effect, or payment may be ordered generally from penalties if the improvement district has contracted to that effect. *Board of Comm'r's v. Delinquent Lands*, 195 Ark. 681, 113 S.W.2d 730 (1938).

Where taxpayers paid amounts with which they stood charged, a finding that no attorney fees were chargeable to property owners until judgment was rendered and fees collected prior thereto should be refunded was held proper. *Board of Comm'r's v. Delinquent Lands*, 195 Ark. 681, 113 S.W.2d 730 (1938).

#### **Statute of Limitations.**

There is no statute of limitations on suits to collect assessments, except § 14-86-1208. *Martin v. Board of Comm'r's*, 190 Ark. 747, 81 S.W.2d 414 (1935).

### **14-90-1406. Proceedings in rem.**

(a) Under this subchapter, proceedings shall in nature be in rem, and insofar as the rights of the purchaser are concerned, it shall be immaterial that the ownership of the lots, blocks, or parcels of land is incorrectly alleged in the proceedings.

(b) The decree shall be enforceable only against the delinquent property and not against any other property or estate of the defendants or the true owners of the delinquent property.

(c) In listing the lots, blocks, and parcels of land, they may be combined where they are constituent parts of a single improvement.

**History.** Acts 1937, No. 207, § 2; Pope's Dig., § 7312; Acts 1949, No. 195, § 18; A.S.A. 1947, § 20-441.

**Publisher's Notes.** This section applies to all municipal improvement districts whether created before or after its

enactment. See §§ 14-90-102 and 14-90-103.

**Cross References.** Lien of district may be enforced notwithstanding tax sale to state, § 14-86-1601 et seq.

### **CASE NOTES**

#### **ANALYSIS**

Constitutionality.

Purpose.

Applicability.

Allegations of ownership.

Delinquent property.

#### **Constitutionality.**

This section is not violative of the due process clause, U. S. Const., Amend. 14, because it makes foreclosure proceedings an action in rem against the lands and provides that an incorrect allegation of ownership should be immaterial. *Stith v. Pinkert*, 217 Ark. 871, 234 S.W.2d 45 (1950), appeal dismissed, 341 U.S. 901, 71 S. Ct. 613, 95 L. Ed. 1341 (1951).

#### **Purpose.**

The purpose of this section is to aid the improvement district in collecting its de-

linquent taxes, and the express power conferred on the district to acquire property by foreclosure of its tax lien necessarily implies the power to accomplish the same result by a conveyance from the property owner, free of other liens. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

#### **Applicability.**

This section is not retroactive and was held not applicable to proceeding pending at the time it was enacted. *Cutsinger v. Strang*, 203 Ark. 699, 158 S.W.2d 669 (1942).

This section was held applicable to pending litigation on its effective date in that it only applies to or affects remedies in procedure. *Stith v. Pinkert*, 217 Ark. 871, 234 S.W.2d 45 (1950), appeal dis-

missed, 341 U.S. 901, 71 S. Ct. 613, 95 L. Ed. 1341 (1951).

#### **Allegations of Ownership.**

In action for foreclosure of delinquent assessments on lands within improvement district, clerical error in owner's name does not render the decree void, the action under this section being in the nature of proceedings in rem and any foreclosure judgment therein to be enforced wholly against the assessed property. *Stith v. Pinkert*, 217 Ark. 871, 234 S.W.2d 45 (1950), appeal dismissed, 341 U.S. 901, 71 S. Ct. 613, 95 L. Ed. 1341 (1951).

#### **Delinquent Property.**

Where improvement district acquired title by voluntary conveyance from owner in satisfaction of delinquent taxes, inclusion of certain property outside the district so as to include the whole of a little house, being merely incidental to the main purpose, was held not to invalidate the conveyance on ground that district had no power to acquire land beyond its boundaries. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

### **14-90-1407. Property included in suit.**

In proceedings under this subchapter, all of the delinquent property in a municipal improvement district may and should be included in one (1) suit, and the suit may cover more than one (1) past due installment.

**History.** Acts 1937, No. 207, § 3; Pope's Dig., § 7315; Acts 1939, No. 130, § 1; A.S.A. 1947, § 20-443.

### **14-90-1408. Publication of notice.**

(a)(1) The warning order or notice of the pendency of a suit under this subchapter shall be given by publication weekly for two (2) weeks before judgment is entered for the sale of the lands, lots, blocks, or parcels of land, or railroad tracks and rights-of-way in some newspaper published in the county where the suits may be pending.

(2) The warning order or notice may be in the following terms:

"Board of Commissioners, (and name of improvement district),  
Plaintiff,

vs.

Delinquent Lands, Lots, Blocks or Parcels of Land, and railroad tracks  
and right-of-way, in said district .....,  
Defendants.

"All persons, firms, or corporations having or claiming an interest in any of the following described lands, lots, blocks, or parcels of land, or railroad tracks and rights-of-way, are hereby notified and warned that suit is pending in the Chancery Court of ..... County, Arkansas, to enforce the collection of certain ..... taxes or assessments on the subjoined list of lands, each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to-wit:

"(Then shall follow a list of supposed owners, with a description of each separate property that is delinquent, and amount due thereon



respectively as aforesaid); and said warning order or notice may conclude in the following form:

“All persons, firms and corporations interested in any of said property are hereby warned and notified that they are required by law to appear within four weeks and make defense to said suit, or the same will be taken for confessed and final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes or assessments, together with the payment of interest, penalty, attorney’s fee, and costs adjudged against each tract.

.....  
Clerk of said Court.”

(b) The service by notice as provided in this section shall be just as effective and binding on the property as though service was had under § 14-90-1003.

**History.** Acts 1937, No. 207, §§ 3, 8; Pope’s Dig., §§ 7315, 7320; Acts 1939, No. 130, § 1; A.S.A. 1947, §§ 20-443, 20-447.

### CASE NOTES

#### ANALYSIS

Constitutionality.  
Rules of procedure.

comported with due process. *Fulmer v. Board of Comm’rs*, 286 Ark. 419, 692 S.W.2d 246 (1985).

#### Constitutionality.

Where notices were given the landowner, whose property was being sold to satisfy a lien created by his failure to pay an improvement district assessment, by publication and by mail as required by this section and § 14-86-1403, respectively, the notice given the landowner

#### Rules of Procedure.

The notice provisions of ARCP 4 do not apply in an action by the board of commissioners to sell a landowner’s property to satisfy a lien created by his failure to pay an improvement district assessment. *Fulmer v. Board of Comm’rs*, 286 Ark. 419, 692 S.W.2d 246 (1985).

### 14-90-1409. Trial, decree, and sale generally.

(a)(1) Under this subchapter, a suit shall stand for trial at the first term of court, or adjourned day of court, after the complaint is filed, if the four (4) weeks shall expire either before the first day of the term or during the term of court to which the suits are brought, respectively, unless a continuance is granted for good cause shown, within the discretion of the court.

(2) A continuance for good cause shown may be granted as to a part of the lands or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted.

(b)(1) In all cases where notice has been properly given as prescribed in § 14-90-1408 and where no answer has been filed, or, if filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as requested in the complaint and shall direct the commissioner to sell the lands, lots, blocks, or parcels of land, or railroad tracks and rights-of-way described in the complaint at the courthouse door of the

county where the decree is entered, at public outcry, to the highest and best bidder, for cash in hand, after having first advertised the sale. This advertisement may include all the different properties described in the decree. It shall be published weekly for two (2) weeks, consecutively, in some newspaper published in the county, or, if there is no such newspaper, the advertisement may be published in some newspaper published in an adjoining county.

(2) If all the lands, lots, blocks, or parcels of land, or railroad tracks and rights-of-way are not sold on the day as advertised, the sale shall continue, from day to day, until completed.

(c) The commissioner shall, by proper deed, convey to the purchaser the lands, lots, blocks, or parcels of land, and railroad tracks and rights-of-way so sold, and the title to the property shall thereupon become vested in the purchaser as against all others whomsoever, saving to infants and to insane persons having no guardian or curators the right they now have by law to appear and contest the proceedings within three (3) years after their disabilities are removed.

**History.** Acts 1937, No. 207, § 4; Pope's Dig., § 7316; A.S.A. 1947, § 20-444.

**Cross References.** Collection of delinquent improvement district taxes or as-

sessments transferred to county tax collector, § 14-86-1001.

Purchaser entitled to possession during redemption period, § 14-86-1501.

## CASE NOTES

### ANALYSIS

Sale of property.

—Notice.

—Redemption.

### Sale of Property.

Where improvement district sold property acquired at foreclosure sale at an inadequate price, such sale was not void on the ground of inadequacy, in action brought by original purchaser over five years after foreclosure sale, as time for redemption had expired, and amount of purchase price was no concern of original owner. *Schuman v. Cherry*, 215 Ark. 342, 220 S.W.2d 817 (1949).

—Notice.

Where landowner's name is omitted from published notice of sale of lands in

foreclosure of improvement district assessments, the defect is immaterial under this section. *Stith v. Pinkert*, 217 Ark. 871, 234 S.W.2d 45 (1950), appeal dismissed, 341 U.S. 901, 71 S. Ct. 613, 95 L. Ed. 1341 (1951).

### —Redemption.

Until the issuance of the deed provided by this section, the purchaser is not vested with legal title and the chancery court can grant additional redemption time to the holder of the legal title. *Dickie v. Sewer Imp. Dist. No. 1*, 328 F.2d 296 (8th Cir.), cert. denied, 379 U.S. 821, 85 S. Ct. 42, 13 L. Ed. 2d 32 (1964).

## 14-90-1410. Sale to plaintiff.

At a sale under the provisions of this subchapter, if there be no purchaser offering as much as the total tax or assessment, plus penalty, interest, and all costs and attorney fees allowed, the property shall be sold to the plaintiff.

**History.** Acts 1937, No. 207, § 5; Pope's Dig., § 7317; A.S.A. 1947, § 20-445.

### CASE NOTES

#### ANALYSIS

Improvement districts.  
Purchase price.

#### Improvement Districts.

The authority of an improvement district to purchase real estate under a decree of the chancery court for the collection of delinquent assessments is conferred by this section. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

Improvement district acquiring title by voluntary conveyance from owner in sat-

isfaction of delinquent taxes was held not engaged in real estate business, sole object being to collect its taxes by resale of the property. *Dewoody v. Jones*, 202 Ark. 345, 150 S.W.2d 208 (1941).

#### Purchase Price.

Sale of vacant lots on foreclosure sale to improvement district for amount of delinquent taxes and penalties is not void on the ground of inadequacy of sales price. *Schuman v. Cherry*, 215 Ark. 342, 220 S.W.2d 817 (1949).

### 14-90-1411. Redemption of property.

Any person, firm, or corporation having an interest in any property sold under the provisions of this subchapter may redeem it as required by law. However, the chancery clerk, in writing up the certificate of redemption, shall not charge and receive more than fifty cents (50¢) for one (1) separate call of property as listed and sold, and the sum of twenty-five cents (25¢) for each additional call or description of property which the person, firm, or corporation so redeeming may require to be redeemed and placed on the certificate.

**History.** Acts 1937, No. 207, § 6; Pope's Dig., § 7318; A.S.A. 1947, § 20-446.

**Publisher's Notes.** The collection of delinquent improvement district taxes or

assessments has been transferred to the county tax collector by § 14-86-1001.

**Cross References.** Duty of chancery clerk, § 14-86-1207.

### CASE NOTES

#### Period of Redemption.

Period of redemption from foreclosure sale by municipal improvement district is

five years. *Schuman v. Cherry*, 215 Ark. 342, 220 S.W.2d 817 (1949).

## CHAPTER 91

# CONSTRUCTION, OPERATION, REPAIR, AND SALE OF MUNICIPAL IMPROVEMENTS

#### SUBCHAPTER

1. GENERAL PROVISIONS.
2. CONSTRUCTION OF IMPROVEMENTS GENERALLY.
3. CONSTRUCTION IN LEVEE OR FLOOD CONTROL DISTRICTS.
4. OPERATION OF FACILITIES GENERALLY.
5. REPAIRS, REPLACEMENTS, IMPROVEMENTS, AND EXTENSIONS OF FACILITIES GENERALLY.
6. CONTINUANCE OF DISTRICTS FOR MAINTENANCE AND REPAIR.



SUBCHAPTER.

7. NEW DISTRICTS TO ENLARGE OR RECONSTRUCT EXISTING WORKS.
8. IMPROVEMENT OF WATER PLANTS FOR VETERANS' HOSPITALS.
9. SEWER CONNECTIONS TO LANDS OUTSIDE DISTRICT.
10. SALE OF WATERWORKS.
11. CHANGE OF PLANS IN CITIES WITH A POPULATION EXCEEDING 60,000.

**SUBCHAPTER 1 — GENERAL PROVISIONS**

SECTION.

- 14-91-101. Plans and costs for improvements generally.
- 14-91-102. Approval of State Health Officer.
- 14-91-103. Notice before paving streets.

SECTION.

- 14-91-104. Eminent domain proceedings.
- 14-91-105. Injunctions.
- 14-91-106. Suits on bonds.
- 14-91-107. Exemption from liability.

**Effective Dates.** Acts 1913, No. 125, § 9: approved Mar. 3, 1913. Emergency declared.

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is

great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

**RESEARCH REFERENCES**

**ALR.** Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified

contractors a percentage preference in determining lowest bid. 89 ALR 4th 587.

What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects. 5 ALR 5th 470.

**14-91-101. Plans and costs for improvements generally.**

(a)(1) Immediately after their qualification, a municipal board of improvement shall form plans for the improvement as requested in the petition and shall procure estimates of the cost thereof. All improvements shall be made with reference to the grades of streets and alleys as fixed, or may be fixed by the ordinances of the city or town.

(2) For this purpose, the board may employ such engineers and other agents as may be needful and may provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost of the improvement.

(b) If for any cause the improvement shall not be made, the cost shall be a charge upon the real property in the district and shall be raised

and paid by an ad valorem tax upon the real property in the district as assessed for the state and county purposes. This tax shall be levied by the city or town council, on the application of any person interested, and shall be paid to the board, to be distributed among the creditors of the district.

(c) When any improvement is abandoned, it is made the duty of the board to report to the city or town council the total amount of the debts which it has incurred, to the end that the city or town council may make adequate provision for their payment.

**History.** Acts 1881, No. 84, § 4, p. 161; § 6; Pope's Dig., § 7290; A.S.A. 1947, C. & M. Dig., § 5656; Acts 1929, No. 64, § 20-301.

### CASE NOTES

#### ANALYSIS

Abandonment.

Attorney representation.

Filing requirement.

Formulation of plans and cost estimates.

Grades of streets and alleys.

Improvements not made.

#### **Abandonment.**

Where two petitions for the same improvement were filed but no action was taken on them, they must be treated as abandoned. *McDonnell v. Improvement Dist. No. 145, 97 Ark. 334, 133 S.W. 1126 (1911)*. But see *Lenon v. Tunnah, 174 Ark. 765, 297 S.W. 819 (1927)*.

#### **Attorney representation.**

Boards of improvement have power under subdivision (a)(2) to employ attorneys to represent the districts. *Bourland v. Coleman, 187 Ark. 392, 60 S.W.2d 1021 (1933)*.

#### **Filing requirement.**

Where the board of improvement formed plans and procured an estimate of costs and reported to the city council that it had done so, but did not file the plans or estimates with that body, the council was authorized to appoint the assessors. *Ingram v. Thames, 150 Ark. 443, 234 S.W. 629 (1921)*.

#### **Formulation of Plans and Cost Estimates.**

The board of improvement can fix the method and extent of the improvement, but not determine what streets should be paved. *Boles v. Kelley, 90 Ark. 29, 117 S.W. 1073 (1909)*; *McDonnell v. Improvement*

*Dist. No. 145, 97 Ark. 334, 133 S.W. 1126 (1911)*; *Ruddell v. Monday, 179 Ark. 920, 18 S.W.2d 910 (1929)*.

The nature of the improvement is fixed by the petition and ordinance. *Board of Imp. v. Brun, 105 Ark. 65, 150 S.W. 154 (1912)*.

The board of improvement cannot substitute a different improvement. *Meehan v. Maxwell, 115 Ark. 594, 172 S.W. 1013 (1914)*.

If cost would exceed the limit, the board of improvement may change the plans. *Buxton v. City of Nashville, 132 Ark. 511, 201 S.W. 512 (1918)*.

The board of improvement must make definite plans. *Missouri Pac. R.R. v. Waterworks Imp. Dist. No. 1, 134 Ark. 315, 203 S.W. 696 (1918)*.

Plans for the improvement of certain named streets which provided for a brick, asphalt, or other suitable wearing surface on a concrete base and stated definitely the cost were not indefinite. *Conway v. Commissioners of Bd. of Imp. Dist., 165 Ark. 487, 265 S.W. 45 (1924)*.

By specifying in the petition the kind of materials and manner of paving, the property owners may restrict the powers of the commissioners. *Thacker v. Paving Imp. Dist. No. 5, 182 Ark. 368, 31 S.W.2d 758 (1930)*.

#### **Grades of Streets and Alleys.**

Grades of streets need not be established before improvement district is formed. *McDonnell v. Improvement Dist. No. 145, 97 Ark. 334, 133 S.W. 1126 (1911)*; *Williams v. Sewer Imp. Dist. No. 86, 180 Ark. 510, 22 S.W.2d 405 (1929)*.

City is liable for change of grade and not

improvement district. *Eickhoff v. City of Argenta*, 120 Ark. 212, 179 S.W. 367 (1915).

It is not necessary that the city council pass an ordinance fixing the grades of street before formation of a street improvement district; rather grades may be established at any time prior to the making of the improvements. *Street Imp. Dist. No. 1 v. Cooper*, 215 Ark. 760, 223 S.W.2d 607 (1949).

Where evidence failed to show any passing of an ordinance fixing the grades of streets, the chancellor was justified in restraining district commissioners from

proceeding with surfacing of the streets until such ordinance was passed. *Street Imp. Dist. No. 1 v. Cooper*, 215 Ark. 760, 223 S.W.2d 607 (1949).

#### **Improvements Not Made.**

Municipal council cannot abolish improvement district on the ground that proposed improvement is impracticable or on petition of large majority of property owners, but only where the cost will exceed the limit fixed by law or the petition. *Board of Imp. v. Earl*, 71 Ark. 4, 69 S.W. 577, 71 S.W. 666 (1903).

### **14-91-102. Approval of State Health Officer.**

(a) In municipal waterworks and sewer improvement districts, the commissioners shall confer with the State Health Officer in forming their plans and specifications and shall not adopt any plans and specifications until they have been approved by the officer in writing.

(b) A certificate of his approval shall be filed with the city clerk or town recorder.

**History.** Acts 1929, No. 64, § 7; Pope's Dig., § 7291; A.S.A. 1947, § 20-302.

### **RESEARCH REFERENCES**

**Ark. L. Rev.** Constitutional Law — Fluoridation of City Water, 10 Ark. L. Rev. 496.

### **14-91-103. Notice before paving streets.**

(a)(1) Before any street is paved, the commissioners on the board of improvement for a municipal improvement district may give notice to waterworks companies, gas companies, and other public service corporations of their intention to pave the street. They shall, in the notice, fix a reasonable time in which the public service corporations shall make excavations, for the purpose of laying down the service pipes and conduits to the property line.

(2) Thereafter, it shall be unlawful for the public service corporations or for any individual to make any excavations in the streets, except upon condition of restoring the streets to their condition as they were before the excavation was made, and paying to the commissioners of the district, or, in case of their discharge, to the city or town, twenty-five dollars (\$25.00) for each excavation.

(b)(1) The sum of twenty-five dollars (\$25.00) shall be paid before the work of excavation is begun.

(2) If the work of excavation is begun without this payment, the commissioners of the district or, in case of their discharge, the city or



town may recover the sum of fifty dollars (\$50.00) from the party undertaking the excavations, together with all costs and a reasonable attorney's fee, to be taxed by the court.

**History.** Acts 1913, No. 125, § 8; C. & M. Dig., § 5736; Pope's Dig., § 7380; A.S.A. 1947, § 20-310.

### CASE NOTES

#### ANALYSIS

Construction.  
Applicability.

**Construction.**

This section is penal and must be strictly construed. *River Valley Gas Co. v. Improvement Dists. Nos. 1 & 2*, 187 Ark. 990, 63 S.W.2d 539 (1933).

#### Applicability.

This section is limited to such companies as were in existence when the pavements were constructed and received notice of the construction. *River Valley Gas Co. v. Improvement Dists. Nos. 1 & 2*, 187 Ark. 990, 63 S.W.2d 539 (1933).

### 14-91-104. Eminent domain proceedings.

(a)(1) A municipal board of improvement shall have power to enter upon any private property for the construction of any designed improvement.

(2) Any damages that may be sustained thereby shall be paid out of the improvement fund.

(b)(1) If the person damaged and the board cannot agree on the sum to be paid for the damages, the person aggrieved may file his petition in the circuit court of the county, setting forth his grievance, and asking compensation therefor, making the board a party defendant.

(2) The issues in the suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties.

(3) The case shall be advanced on the docket so as to have precedence of all other causes.

(4)(A) The judge of the circuit court may hold a special term at any time for the trial of any such cause, giving ten (10) days' notice to the parties of the time of holding that special term, which may be in writing.

(B) The notice shall be served on the parties as a writ of summons is directed to be served unless it is waived by the parties or one of them.

(5)(A) The judge of the court may, in vacation, in case an agreement cannot be arrived at between the board and the owner of the property in relation to the damages claimed, fix an amount to be deposited with some person, to be designated by the court, before the entering upon and taking possession of the property to be used and taken as prescribed.

(B) Upon the amount required being deposited and a certificate thereof filed in the cause, the work may proceed.

**History.** Acts 1881, No. 84, § 21, p. 161; C. & M. Dig., §§ 4022-4026; Pope's Dig., §§ 5024-5028; A.S.A. 1947, § 20-309.

**Cross References.** Eminent domain generally, § 18-15-101 et seq.

### CASE NOTES

#### Title to Property.

Title to property condemned will not pass until the money has been deposited

in court for the payment of the owner's damages. *Cannon v. Felsenthal*, 180 Ark. 1075, 24 S.W.2d 856 (1930).

#### 14-91-105. Injunctions.

No injunction shall issue to restrain the prosecution of any work contemplated by this act. Rather, any person injured shall seek his relief by proceedings at law, within the time provided, or he shall be deemed to have waived it. However, an injunction may issue where an illegal assessment shall be sought, under the color of this act, to be enforced.

**History.** Acts 1881, No. 84, § 20, p. 161; C. & M. Dig., § 5740; Pope's Dig., § 7381; A.S.A. 1947, § 20-314.

**Meaning of "this act".** Acts 1881, No. 84, codified as §§ 14-88-101, 14-88-202, 14-88-204, 14-88-302, 14-88-303, 14-88-305 — 14-88-308, 14-88-311, 14-88-403, 14-88-502, 14-89-201, 14-89-1001, 14-89-1002, 14-90-101, 14-90-201, 14-90-302, 14-

90-403, 14-90-701, 14-90-801 — 14-90-805, 14-90-902, 14-90-903, 14-90-916, 14-90-1001 — 14-90-1003, 14-90-1005, 14-90-1006, 14-90-1101 — 14-90-1106, 14-90-1108, 14-90-1201 — 14-90-1204, 14-90-1302, 14-90-1303, 14-91-101, 14-91-104 — 14-91-107, 14-91-201, and 14-235-301 — 14-235-305.

### CASE NOTES

**Cited:** *Ryall v. Waterworks Imp. Dist.* No. 3, 247 Ark. 739, 447 S.W.2d 341 (1969).

#### 14-91-106. Suits on bonds.

Suit may be brought by and in the name of a municipal board of improvement upon any bond given to the board, but the sum recovered shall be for the use of the fund of the improvement district for which the bond was given.

**History.** Acts 1881, No. 84, § 14, p. 161; C. & M. Dig., § 5738; Pope's Dig., § 7365; A.S.A. 1947, § 20-312.

#### 14-91-107. Exemption from liability.

No member of any municipal board of improvement shall be liable for any damages sustained by anyone in the prosecution of the work under his charge, unless it shall be made to appear that the member has acted with a corrupt or malicious intent.

**History.** Acts 1881, No. 84, § 19, p. 161; C. & M. Dig., § 5734; Pope's Dig., § 7362; A.S.A. 1947, § 20-313.

### CASE NOTES

#### **Negligent Injuries.**

Commissioners of an improvement district charged with the performance of a public undertaking are not liable for a negligent injury to an employee of the district in the absence of a corrupt or

malicious intent. *Board of Imp. v. Moreland*, 94 Ark. 380, 127 S.W. 469 (1910).

**Cited:** *Ryall v. Waterworks Imp. Dist.* No. 3, 247 Ark. 739, 447 S.W.2d 341 (1969).

## SUBCHAPTER 2 — CONSTRUCTION OF IMPROVEMENTS GENERALLY

### SECTION.

14-91-201. Powers of improvement boards.

#### **14-91-201. Powers of improvement boards.**

(a) Municipal boards of improvement shall have control of the construction of the improvements in their improvement districts.

(b) The boards may advertise for proposals for doing any work by contract and may accept or reject any proposals.

(c) All contractors shall be required to give bond for the faithful performance of such contracts as may be awarded them, with good and sufficient securities, in double the amount of the contract work, and the board shall not remit or excuse the penalty or forfeiture of the bond for the breaches thereof.

(d) The boards may appoint all necessary agents for carrying on the work and may fix their pay.

(e) The boards may buy all necessary material and may sell any such materials or implements as may be on hand, and which may not be necessary for the completion of the improvement under way, or which may have been completed.

(f) The boards may, in general, make all contracts in the prosecution of the work as may best subserve the public interest.

**History.** Acts 1881, No. 84, § 17, p. 161; C. & M. Dig., §§ 5710, 5737; Pope's Dig., §§ 7349, 7364; A.S.A. 1947, § 20-311.

### CASE NOTES

#### **Contractual Obligations.**

The board of commissioners of an improvement district could not, by its conduct, excuse any failure on the part of the contractor to perform his work according to the contract after the work had been done. This section would not prevent the board, during the progress of the work,

from making changes therein by agreement with the contractor, and if the board, during the time the work was progressing, acquiesced in or consented to certain changes, the district would be precluded by such actions on the part of the board from recovering against the contractor for damages based upon these changes as



alleged breaches of the contract. Board of Imp. Comm'rs v. Galbraith, 133 Ark. 302, 185 S.W. 474 (1916).

An improvement district was not estopped to maintain a suit for money paid to the contractor under a contract for the construction of a sewer system where it

took possession of the system and endeavored to complete it after the contractor quit, as the district could not excuse a failure of performance. United States Fid. & Guar. Co. v. Board of Comm'rs, 137 Ark. 375, 209 S.W. 88 (1919).

### SUBCHAPTER 3 — CONSTRUCTION IN LEVEE OR FLOOD CONTROL DISTRICTS

#### SECTION.

14-91-301. Applicability.

14-91-302. Definition.

14-91-303. Authority generally.

14-91-304. Agreements with federal government.

14-91-305. Assistance by municipality.

#### SECTION.

14-91-306. Authorization to use county land.

14-91-307. Right to acquire lands.

14-91-308. Failure to obtain rights by agreement.

14-91-309. Eminent domain proceedings.

**Effective Dates.** Acts 1947, No. 23, § 6; Feb. 4, 1947. Emergency clause provided: "That it is found and determined as a fact that the provisions contained in this act are immediately necessary in order that municipal levee and flood control improvement districts in Arkansas may avail themselves to the fullest extent of the flood control program of the United

States of America, and that this act is immediately necessary to permit such municipal improvement districts in Arkansas to avoid the disastrous effect of floods which are a menace to the public health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after the date of its passage and approval."

#### 14-91-301. Applicability.

This subchapter shall apply to any municipal levee or flood control district organized and existing under the laws of the State of Arkansas relative to the formation of improvement districts in cities and towns but shall not apply to any rural improvement district.

**History.** Acts 1947, No. 23, § 5; A.S.A. 1947, § 20-337.

#### 14-91-302. Definition.

As used in this subchapter, unless the context otherwise requires, "levees and flood control projects" mean all sumps, drainage structures, and other works reasonably necessary or desirable for the construction, operation, and maintenance of a levee or flood control project.

**History.** Acts 1947, No. 23, § 1; A.S.A. 1947, § 20-334.

**14-91-303. Authority generally.**

(a) Any municipal levee or flood control improvement district organized and existing in accordance with the laws of the State of Arkansas relative to the formation of improvement districts in cities or towns may construct and maintain, or cause to be constructed and maintained, levees and flood control projects under, over, across, and along the waters and lands belonging to this state and along and over the public streets and highways of the municipality in which the district is located.

(b)(1) The district may also construct and maintain levees and flood control projects upon, along, and across any railroad right-of-way, on and over any lands belonging to the municipality in which the district is located, and on and over any lands belonging to the county in which the district is located, and on and over the lands belonging to corporations and individuals.

(2) The ordinary use of the railroads shall not be obstructed and just damages shall be paid to the owners of any land structure and railroad right-of-way taken by eminent domain.

**History.** Acts 1947, No. 23, § 1; A.S.A. 1947, § 20-334.

**14-91-304. Agreements with federal government.**

(a) A municipal levee or flood control improvement district may enter into contracts with the federal government, or any of its agencies, for the construction of levee or flood control projects and may give such assurances to the federal government, or any of its agencies, as may be required by or under any act of Congress, subject only to such limitations as may be imposed on the district by the Constitution of the State of Arkansas or the acts of the General Assembly under which the district is organized.

(b) The district may authorize the federal government, and its officers, agents, and contractors, to construct levee and flood control projects and to enter upon lands or rights-of-way acquired or occupied by the district pursuant to the terms of this subchapter.

**History.** Acts 1947, No. 23, § 1; A.S.A. 1947, § 20-334.

**14-91-305. Assistance by municipality.**

(a) The municipality in which a municipal levee or flood control district is located may enter into contracts with, and give assurances to, the federal government, or any of its agencies, that the municipality, on completion of the project, will operate and maintain it.

(b) The municipality may, from its own funds, assist the district and it may also donate to the district, by proper conveyance, any land belonging to the municipality reasonably necessary or desirable for the construction, maintenance, and operation of the project.

**History.** Acts 1947, No. 23, § 1; A.S.A. 1947, § 20-334.

#### **14-91-306. Authorization to use county land.**

The county court in which a municipal levee or flood control district is located may, by its order, authorize the district, without the payment of compensation or damages, to enter upon and use any land belonging to the county which is reasonably required or desirable for the construction, operation, and maintenance of the project upon a finding by the court that the interests of the public and the county will be benefited thereby.

**History.** Acts 1947, No. 23, § 1; A.S.A. 1947, § 20-334.

#### **14-91-307. Right to acquire lands.**

A municipal levee or flood control improvement district may acquire and occupy all lands and rights-of-way reasonably necessary or desirable for the construction, operation, and maintenance of levees and flood control projects.

**History.** Acts 1947, No. 23, § 1; A.S.A. 1947, § 20-334.

#### **14-91-308. Failure to obtain rights by agreement.**

In the event the district shall fail, upon application to the individuals, corporations, railroads, county, or municipality, to secure the needed right-of-way or lands by consent, contract, or agreement or if the owners of them are unknown, uncertain, nonresidents, or under disability, then the district shall have the right to procure the condemnation of the property, lands, rights, privileges, and easements in the manner prescribed in § 14-91-309.

**History.** Acts 1947, No. 23, § 2; A.S.A. 1947, § 20-335.

#### **14-91-309. Eminent domain proceedings.**

(a)(1)(A) The circuit judge of any county in which it becomes necessary or desirable for a municipal levee or flood control improvement district to condemn rights-of-way, lands, or structures shall, upon the written application of the district, appoint three (3) resident landowners of the municipality in which the district is located, to be known as appraisers, to assess damages for the appropriation of land for the project.

(B)(i) The appraisers shall hold their offices for a term of one (1) year and until their successors are appointed and qualified.

(ii) Vacancies occurring in the board of appraisers shall be filled by the circuit judge.



(C) The appointment of appraisers shall be made, in writing, by the circuit judge and filed with the circuit clerk and spread by him upon the records of the circuit court.

(2) The appraisers shall take an oath before the circuit clerk that they will make a just and true award of the compensation of any landowner by reason of rights-of-way, lands, or structures taken for the project by condemnation. The oaths shall be reduced to writing, signed by the assessors and spread by the clerk upon the records of the circuit court.

(3) If any appraiser is interested in any property to be condemned, he shall not act as to the property.

(4) The board of improvement of the district may consult with and use the services of the board of appraisers in seeking to acquire needed lands and rights-of-way by consent and deed.

(5) Reasonable compensation to be fixed by the circuit court shall be allowed the appraisers for their services, and the compensation shall be paid by the district.

(b)(1)(A) Whenever any such district deems it necessary to take or use any rights-of-way, land, or structures for the project, or when the project has already been entered upon by the district, then the district may file a petition with the clerk of the circuit court of the county in which the property is situated. The petition shall describe, as near as may be practical, the property taken, or proposed to be taken, and ask that the property described in the petition be condemned and that the appraisers make an award to the owners of the land or property.

(B)(i)(a) The owners of each tract of land or right-of-way described in the petition shall be made defendants in the petition.

(b) The term owners shall include unknown owners where it is alleged in the petition that the names of the owners are unknown or uncertain.

(ii) Persons or corporations holding any lien or lease upon, or claiming any interest in, the land may also be made defendants.

(iii) It shall be no objection that several tracts of land or rights-of-way belonging to different owners are included in the same petition.

(C)(i) When the petition is filed, the circuit clerk shall notify the appraisers of the filing, whose duty it shall then be to assemble, at some convenient time, and ascertain the fair market value of the property appropriated or intended to be appropriated and the damages, if any, to the remainder of each tract.

(ii)(a) The appraisers shall reduce their findings to writing, giving the amount of award as to each tract, and shall sign it and file the findings with the circuit court.

(b)(1) The clerk shall immediately issue a summons directed to the sheriff of the county, together with a copy of the award attached thereto, commanding him to serve the owners as in ordinary suits at common law.

(A) If the owners are nonresidents of the state, or if it is alleged in the petition that the owners of any tract or persons having an interest

in any tract are unknown or uncertain, it shall be the duty of the clerk to publish a warning order in some newspaper published in the municipality in which the district is located once a week for two (2) consecutive weeks.

(B)(i) The warning order may be in the following form:

“To (name of supposed owners) and all other persons, having any claim and interest in and to the following described land situated in ..... County, Arkansas, namely: (here describe the land set forth in the petition over which the levee or flood control project passes); you are hereby warned to appear in the ..... Circuit Court within twenty (20) days, and file exceptions to the award which has been filed in my office by the levee and flood control appraisers of ..... district for the appropriation of the hereinbefore described land, for the construction, or intended construction of a levee and flood control project over and across the same.”

(ii) The warning order shall be dated and signed by the clerk.

(2)(A) If no exception is filed by the owners within twenty (20) days after service of summons, or within twenty (20) days after the date of the first publication of the warning order, or by the district within twenty (20) days after the award is filed, then it shall be the duty of the circuit clerk to call the court's attention to the award and to the failure to file exceptions thereto after notice having been given as provided in this section. Upon such information the court shall proceed to enter a judgment in favor of the owners of such lands against the district for the amount awarded by the appraisers and for condemnation upon payment of the amount adjudged to the owners or into the registry of the court for their benefit.

(B)(i)(a) In case exceptions are filed by either party within the time prescribed in this section, it shall be the duty of the clerk to docket the cause.

(b) The petition originally filed by the district and the award of the appraisers shall constitute all necessary pleadings in the proceedings.

(ii) In case a trial is demanded or requested by either party, the question shall be tried as other common law cases are tried.

(3)(A)(i) Where the determination of questions in controversy in the proceedings is likely to retard the progress of the construction, then upon the filing of the award by the appraisers, the circuit court, or the judge thereof, in vacation, upon request of the district, shall designate an amount of money to be deposited by the district, subject to the order of the court, and for the purposes of making just compensation when the amount thereof shall have been assessed.

(ii) The judge shall designate the place of the deposit.

(B) In designating the amount of money to be deposited, the court or judge shall accept the award of the appraisers as *prima facie* correct.

(C) Whenever the deposits shall have been made in compliance with the order of the court or judge, it shall be lawful for that district

to enter upon the lands in controversy and proceed with their work of construction prior to the final judgment and payment of damages and compensation.

(4)(A) Upon the petition of the district, any landowner, lienholder, or lessee, the circuit court may order the payment of the final judgment to the parties interested therein in accordance with their several interests.

(B) If there is a conflict in interest among those entitled to the judgment or if the owners are unknown or uncertain, the district may be permitted to pay the final judgment into the registry of the court to await its further orders.

(5) Upon the payment of any judgment, either to the owners or into the registry of the court, a final judgment of condemnation shall be entered.

**History.** Acts 1947, No. 23, § 3; A.S.A. 1947, § 20-336.

#### SUBCHAPTER 4 — OPERATION OF FACILITIES GENERALLY

##### SECTION.

14-91-401. Operation of water and electric light plants in cities of the first class.

##### SECTION.

14-91-402. Operation of waterworks, gas, or electric light works.

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**Effective Dates.** Acts 1893, No. 158, § 3: effective on passage.

Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary

that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1949, No. 242, § 3: approved Mar. 7, 1949. Emergency clause provided: "Whereas confusion presently exists as to whether water and electric light districts, having discharged their bonded indebtedness shall turn over merely the physical works of said district to the city, or shall turn over all other assets as well, this Act is deemed to be immediately necessary for the preservation of the public peace, health and safety, and shall be in full force and effect from and after its passage."

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#### 14-91-401. Operation of water and electric light plants in cities of the first class.

(a) The commissioners on boards of improvement for water and electric light improvement districts in cities of the first class shall control and manage the affairs of the district until the bonds issued to pay therefor and all other indebtedness have been retired. At that time, they shall turn over the works to the city council or other governing



body of the city, together with any and all cash on hand, bonds, or other securities, resulting from the operation of the water or electric light plant.

(b)(1) As long as the commissioners continue to operate the water and electric light districts, they shall make an annual report to the city or town council showing, in detail, all receipts and disbursements made by them.

(2)(A)(i) As long as they continue such operation, they shall have the right to fix the rates to be paid by consumers of water and electric light or power.

(ii) The rates shall be fixed as nearly as possible at amounts which will pay the bonds of the district as they mature, so as to relieve the real property of the district as far as possible from the burden of taxation therefor.

(B)(i) From the rates fixed by the board, any property owner may take an appeal to the circuit court of the county, which shall confirm or set aside the rates as it finds just.

(ii) If it sets aside rates fixed by the board, it shall itself fix rates which will be reasonable and adequate for the purposes prescribed.

**History.** Acts 1929, No. 64, § 18; Pope's Dig., § 7367; Acts 1949, No. 242, § 1; A.S.A. 1947, § 20-315.

**A.C.R.C. Notes.** In subdivision (b)(2)(A)(ii), the words "as they mature, so as to relieve the real property of the district" were inserted inasmuch as they ap-

peared in this section prior to the 1949 amendment and are necessary in order to preserve the meaning.

**Cross References.** Operation of electric light and water plants in cities of the second class and incorporated towns, § 14-201-301 et seq.

## CASE NOTES

### ANALYSIS

In general.

Construction.

Rates.

Retirement of indebtedness.

### In General.

Section 14-201-301 et seq. does not affect the operation of this section in cities of the first class. *Malvern v. Young*, 205 Ark. 886, 171 S.W.2d 470 (1943).

### Construction.

If this section does not repeal § 14-91-402, then the two sections provide alternative methods. *Malvern v. Young*, 205 Ark. 886, 171 S.W.2d 470 (1943).

### Rates.

Where waterworks district allowed residents of other districts to receive water at

the same rate charged residents of the district following payment of all its bonded indebtedness, city could not, upon assuming operation of the district, charge residents of other districts a surcharge, since such surcharge, absent evidence of change in condition or additional expenditures, would constitute an unreasonable discrimination. *Malvern v. Young*, 205 Ark. 886, 171 S.W.2d 470 (1943).

### Retirement of Indebtedness.

Where commissioners continued to operate water plant until all bonded indebtedness was paid off, after turning waterworks over to the city, they were required to collect all delinquent assessments and distribute the money so received, together with any other money on hand, to the property holders. *Malvern v. Young*, 205 Ark. 886, 171 S.W.2d 470 (1943).

## 14-91-402. Operation of waterworks, gas, or electric light works.

(a) In case of the construction of waterworks or gas or electric light works by any municipal improvement district, the city or town council, after the works are constructed, shall have full power and authority to operate and maintain them instead of the improvement district board.

(b) The council may supply water and light to private consumers and make and collect uniform charges for the service and apply the income therefrom to the payment of operating expenses and maintenance of the works.

**History.** Acts 1893, No. 158, § 2, p. 271; C. & M. Dig., § 5739; Pope's Dig., § 7366; A.S.A. 1947, § 20-316.

### CASE NOTES

#### ANALYSIS

Construction.  
Legal actions.  
Power and authority.  
—In general.  
—Maintenance.  
—Operations.

#### Construction.

If this section is not repealed by § 14-91-401, then the two sections provide alternative methods. *Malvern v. Young*, 205 Ark. 886, 171 S.W.2d 470 (1943).

#### Legal Actions.

Where an improvement district was sued for coal alleged to have been furnished to it to run a water and electric light plant for the city, it was a good defense that such plant was being operated by the city and that the coal was furnished by the city for its operation. *Improvement Dist. No. 1 v. Brown*, 86 Ark. 61, 109 S.W. 1010 (1908).

Where the authority of a city to maintain its waterworks plant ceased upon the creation by the legislature of a waterworks district to take over such plant and the acceptance thereof by the city, the city could not claim subsequent damages for breach of a contract to furnish power for such waterworks. *City of Paragould v. Arkansas Light & Power Co.*, 171 Ark. 86, 284 S.W. 529 (1926).

#### Power and Authority.

##### —In General.

A city has express statutory authority under this section to own and operate

light and power plants and may delegate this authority to an agency without creating a board of public utilities as provided in § 14-201-301 et seq. *Adams v. Bryant*, 236 Ark. 859, 370 S.W.2d 432 (1963).

##### —Maintenance.

This section empowered the city council to contract for an electric pump and for the current to operate it, the original steam pumping plant being retained as an emergency plant. *Arkansas Light & Power Co. v. City of Paragould*, 146 Ark. 1, 225 S.W. 435 (1920).

This section has been held to authorize a city operating electric light works constructed by an improvement district to construct a new power house on another tract and to install new machinery and equipment. *McCutchen v. City of Siloam Springs*, 185 Ark. 846, 49 S.W.2d 1037 (1932).

##### —Operations.

Where a city took over the control of the water supply and system of a water district and later a second district was organized covering other territory in the city not covered by the first district, it was held that the city had authority to permit the second district to connect with the mains of the first district and to sell water to the second district where there was an ample water supply and the city made money by the transaction. *Armour v. City of Ft. Smith*, 117 Ark. 214, 174 S.W. 234 (1915).

Where city water plant was turned over

to a board of managers by ordinance which did not authorize employment of superintendent, contract made by board of managers employing superintendent, not authorized or approved by city, was not binding; payment of superintendent's salary could be enjoined, but the contract

being neither illegal nor immoral, superintendent could retain salary already received if not in excess of the actual value of his services. *Gladson v. Wilson*, 196 Ark. 996, 120 S.W.2d 732 (1938).

**Cited:** *Wilson v. Blanks*, 95 Ark. 496, 130 S.W. 517 (1910).

## SUBCHAPTER 5 — REPAIRS, REPLACEMENTS, IMPROVEMENTS, AND EXTENSIONS OF FACILITIES GENERALLY

### SECTION.

14-91-501. Authority generally.

14-91-502. Hearing and approval.

### SECTION.

14-91-503. Assessment procedures.

**Effective Dates.** Acts 1929, No. 64, § 23: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that by reason of the inability under the present laws to extend water mains and repair water plants there is great danger of conflagration, that by reason of the inability to extend electric light plants there is great danger to the public peace and safety, owing to the darkness of the streets, and that by reason of the inability to extend and repair sewers there is great danger to the public health, and that for these reasons it is immediately necessary that this act should go into operation, and it is therefore declared that an emergency exists, and this act shall be in force and effect from and after its passage."

Acts 1935, No. 145, § 8: approved Mar. 20, 1935. Emergency clause provided: "It is ascertained and hereby declared that by reason of the fact that heretofore it has been necessary to obtain the consent of only a bare majority in value of the owners of real property in order to organize a local

improvement district, the organization of such districts all over the State of Arkansas has been in the past greatly abused, advantage has been taken of the owners of property therein and burdensome taxes have been laid upon property owners without any actual increase in property values as compensation therefor, many of such districts having been organized for promotion purposes; that many property owners throughout the State are in danger of losing their said property by reason of their inability to pay the said local improvement taxes; and that unless legislation is immediately enacted making it necessary to obtain the consent of more than a majority in value of said property owners the practice of organizing such districts and the abuse thereof will be continued, all to the serious detriment and injury of owners of property. It is, therefore, found and declared that an emergency exists, and this act shall be in force and effect from and after its passage."

### 14-91-501. Authority generally.

(a)(1) It is realized that waterworks and electric light plants and sewers will wear out and must be repaired and replaced, and that with the growth of our cities and towns, improvement and extensions of these plants and sewers are necessary from time to time.

(2) So far as municipal improvement districts, created for the purpose of installing waterworks and electric light plants and sewers, have funds, they may make these repairs, replacements, improvements, and extensions.



(b)(1) If it is necessary to borrow money for the purpose of making repairs, replacements, improvements, or extensions, the board of improvement of the district shall cause plans and estimates of cost thereof to be prepared and shall file them with the city or town clerk or recorder.

(2)(A) If the improvements so to be made will benefit property beyond the limits of the district as then existing, they shall file with their report a map showing the boundaries of the original district and the territory to be annexed thereto.

(B)(i) If within twelve (12) months thereafter, a petition signed by parties claiming to be two-thirds (2/3) in assessed value of the real property in the original territory and in the territory to be annexed, each taken separately, is filed with the city or town clerk or recorder, requesting that the repairs, replacements, improvements, or extensions be made, he shall give notice of a hearing upon the petition to be had at the next regular meeting of the city or town council held at least fifteen (15) days after the publication of a notice.

(ii) The notice may be substantially in the following form:

“Notice is hereby given that the Commissioners of Water (or Electric Light or Sewer) Improvement District No. ...., of the City (or Town) of ....., have filed their plans for repairs, replacements, improvements, or extensions, in my office, and there has been filed in my office a petition signed by parties claiming to be a two-thirds in value of the owners of real property within said district, as shown by the last county assessment on file (and within the territory proposed to be annexed) praying that the repairs, replacements, improvements, or extensions be made. Said petition will be heard at a meeting of the City (or Town) Council to be held at the hour of ..... P.M., on the .... day of ....., 19...., and at said meeting said Council will determine whether those signing the petition constitute the two-thirds in value of such owners of real property; and at said meeting all owners of real property within the district (and within the territory to be annexed) who desire, will be heard upon the question.

“The territory to be added to the district is described as follows:

.....  
.....

The City Clerk (or Town Recorder)”

**History.** Acts 1929, No. 64, § 14; 1935, No. 145, § 5; Pope’s Dig., § 7368; A.S.A. 1947, § 20-322.

CASE NOTES

**Petition.**

A petition of a majority (now two-thirds) in value of the property owners in a waterworks district authorizing the district to borrow money was not required in a

purchase of an engine where under the contract of purchase no money was to be borrowed but the engine was to be paid for out of the district’s income. *Mississippi Valley Power Co. v. Board of Imp.*, 185

Ark. 76, 46 S.W.2d 32 (1932) (decision prior to 1935 amendment).

### **14-91-502. Hearing and approval.**

(a)(1) At the time named in the notice the city or town council shall meet and hear all persons who wish to be heard upon the question whether two-thirds ( $\frac{2}{3}$ ) in assessed value of the owners of real property within the original district and two-thirds ( $\frac{2}{3}$ ) of the owners within the territory to be annexed have signed the petition.

(2) If it finds that two-thirds ( $\frac{2}{3}$ ) of the property owners in the original district and in the annexation each have so signed, they shall declare the fact by an ordinance.

(b) In the ordinance, they shall annex to the original district the territory described in the petition and notice. They shall authorize the commissioners to proceed with the work of improvement as contemplated in their plans and to borrow the funds necessary for the purpose in the same manner as they were authorized to borrow money for the making of the original improvement.

(c) The finding of the council shall be conclusive unless, within thirty (30) days from publication of the ordinance, suit is brought in the chancery court to set it aside.

(d)(1) The council and chancery court in their finding shall be governed by the record of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument.

(2) They shall also be governed by the value placed upon the property as shown by the last county assessment on file in the county clerk's office.

(e) The ordinance shall be substantially in the following form:

"AN ORDINANCE PROVIDING FOR REPAIRS, REPLACEMENTS, IMPROVEMENTS OR EXTENSIONS OF THE WATERWORKS (OR ELECTRIC LIGHT PLANT OR SEWER) OF ..... DISTRICT NO. .... OF THE CITY (OR TOWN) OF .....

"WHEREAS, a petition has been presented to the City (or Town) Council of the City (or Town) of ....., purporting to be signed by parties constituting two-thirds in assessed value of the real property in the said ..... District No. ...., and in the territory hereinafter described, sought to be annexed thereto, each taken separately, and praying that the repairs, replacements, and improvements on extensions be made; and

"WHEREAS, notice of the filing of said petition has been duly given as required by law, and a hearing has been duly had thereon as the law requires, and at said hearing it was ascertained that a two-thirds in assessed value of the owners of real property within the said district as heretofore established, and a two-thirds in assessed value of the owners of real property in the territory hereby annexed, have signed said petition:

"NOW, THEREFORE, BE IT ORDAINED BY THE CITY (OR TOWN) COUNCIL OF THE CITY (OR TOWN) OF .....

"Section 1. The commissioners of said ..... District No. .... are hereby authorized to make the repairs, replacements, improvements or extensions of the waterworks (or electric light plant or sewers) of said district, shown in their plans on file with the city (or town) Clerk (or Recorder), and to borrow money for that purpose, and may extend the said ..... into the adjacent property hereinafter described.

"Section 2. The following described property, to-wit.

(Here describe the property)

which is adjacent to the said district as heretofore laid out, will be benefited by the proposed repairs, replacements, improvements or extensions of the said ..... and said territory is hereby annexed to the said ..... Improvement District No. ...., and shall hereafter constitute a part thereof.

"Section 3. This ordinance shall take effect and be in force immediately after its passage."

**History.** Acts 1929, No. 64, § 15; 1935, No. 145, § 6; Pope's Dig., § 7369; A.S.A. 1947, § 20-323. **Cross References.** Annexation of territory to district, § 14-88-503.

### 14-91-503. Assessment procedures.

(a)(1) The city or town council shall also appoint a board of three (3) assessors who shall reassess the benefit that will accrue to the owners of the real property within the improvement district from the making of the original improvements and from the proposed repairs, replacements, improvements, or extensions.

(2) The reassessment shall be filed, advertised, equalized, and corrected like the original assessment of benefits and shall become incontestable under the same circumstances as the original assessment of benefits.

(b) The council shall pass an ordinance levying upon the assessment of benefits the tax essential to pay for the work of improvement, including repairs, replacements, improvements, or extensions, substantially in the following form:

"AN ORDINANCE LEVYING AN ASSESSMENT FOR REPAIRS, REPLACEMENTS, IMPROVEMENTS OR EXTENSIONS IN WATERWORKS (OR ELECTRIC LIGHT OR SEWER) ..... DISTRICT NO. ...., OF THE CITY (OR TOWN) OF .....

"WHEREAS, two-thirds in value of the property holders owning property in ..... District No. .... of the City (or Town) of ..... as now organized have petitioned the Council of the City (or Town) of ..... for repairs, replacements, improvements or extensions, and that the cost thereof shall be assessed upon the real property of the said district according to benefits received; and

"WHEREAS, said benefits received by each and every block, lot, and parcel of real property situated in said district equals or exceeds the local assessment thereon; and



"WHEREAS, the estimated cost of said improvement is ..... Dollars;

"THEREFORE, it is now ordained by the City or Town Council of the City or Town of ....., that said several blocks, lots, and parcels of real property in said district be assessed according to the assessment list for said improvement district as the same now remains in the office of the Recorder or City Clerk, and that ..... percent on each of said blocks, lots and parcels shall be paid annually on or before the ..... day of ..... until the whole of said local assessment shall be paid."

(c) The local assessment shall be a charge and a lien against all the real property in the district from the date of the ordinance and shall be entitled to preference over all judgments, executions, encumbrances, or liens whensoever created.

(d) The assessment shall continue until the local assessment, with any penalty and costs that may accrue thereon, shall be paid.

(e) As between grantor and grantee, all payments not due at the date of the transfer of the real property shall be payable by the grantee.

**History.** Acts 1929, No. 64, § 16; 1935, No. 145, § 7; Pope's Dig., § 7370; A.S.A. 1947, § 20-324.

## CASE NOTES

### Betterment.

The theory upon which improvement districts taxes are sustained is that the proposed improvement will enhance the value of the land sought to be taxed, and

the tax is imposed upon this enhanced value, called betterment. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

## SUBCHAPTER 6 — CONTINUANCE OF DISTRICTS FOR MAINTENANCE AND REPAIR

### SECTION.

14-91-601. Procedure generally.

14-91-602. Levy of assessment.

14-91-603. Limitations on assessment.

### SECTION.

14-91-604. Readjustment of assessment.

14-91-605. Law controlling assessments.

**Effective Dates.** Acts 1909, No. 245, § 6: effective on passage.

Acts 1921, No. 477, § 2: effective on passage.

### 14-91-601. Procedure generally.

(a)(1) All improvement districts in cities and towns organized under §§ 14-88-203 — 14-88-205, 14-88-207 — 14-88-210, 14-88-301 — 14-88-303, 14-88-305, 14-88-306, 14-88-308, and 14-88-407 may be prolonged or continued after the completion of the improvement for which they were organized for the purpose of maintaining and keeping those

improvements in a good state of repair, upon a petition of a majority in value of the owners of real property within the district adjoining the locality to be affected, to the city or town council, requesting that the life of the district be prolonged or continued for that purpose.

(2) The petition shall designate the time during which the maintenance and repair shall be undertaken, and the manner and estimated cost thereof, requesting that the cost be assessed and charged upon the real property situated within the district.

(b)(1) Thereupon, the council shall provide by ordinance for the prolongation or continuation of the district as requested, and the board of assessors shall thereupon assess the value of all benefits to be received by the land owned by reason of the maintenance and keeping in repair of the improvement as affecting each of the blocks, lots, or parcels of land within the district.

(2) The board shall at once proceed to inscribe in the assessment book of the district the value of the benefits to accrue to each of the blocks, lots, or parcels of land.

**History.** Acts 1909, No. 245, § 1, p. 477, § 1; Pope's Dig., § 7384; A.S.A. 1947, 742; C. & M. Dig., § 5728; Acts 1921, No. § 20-317.

## CASE NOTES

### ANALYSIS

In general.

Assessment of benefits.

Original and annexed districts.

### In General.

This section confers authority to prolong improvement districts and to assess the maintenance cost thereof against the property in the district. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

### Assessment of Benefits.

Ordinance reciting that property in sewer improvement district was assessed according to assessment list in the office of the city clerk was held invalid for undertaking to make the assessment which this section requires the board of assessors to make. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

Betterments for sewerage purposes may be assessed against vacant property

where, if and when desired, the sewerage connections may be made. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

### Original and Annexed Districts.

Original sewer district and annexed district could be treated as a single district for purposes of maintenance, after the indebtedness of both districts had been discharged, if the two districts were so connected that they might, in fact, be regarded as a single district. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

Where ordinances treated original sewer district and annexed district as separate entities, absent ordinance prolonging life of annexed district, there was no authority to assess and impose upon the lands in that district the cost of maintenance. *Ragsdale v. Cunningham*, 201 Ark. 848, 147 S.W.2d 20 (1941).

**14-91-602. Levy of assessment.**

(a) The city or town council shall provide, by ordinance, for the levy of the assessment of the benefits as made by the assessors under § 14-91-601 and shall fix the day in the year when the assessment shall be paid.

(b) The assessment shall be a charge and lien against all the real property in the district from the date of the ordinance and shall be entitled to preference over all judgments, executions, encumbrances, or liens whensoever created, except the lien for original assessment, and shall continue until the assessments, with any penalty and costs that may accrue, shall be paid.

(c) As between grantor and grantee, all payments not due at the date of the transfer of the real property shall be payable by the grantee.

**History.** Acts 1909, No. 245, § 4, p. 742; C. & M. Dig., § 5731; Pope's Dig., § 7387; A.S.A. 1947, § 20-320.

**14-91-603. Limitations on assessment.**

The assessments for maintenance and repair made pursuant to § 14-91-601 may be in addition to the twenty percent (20%) maximum assessment permitted for the original cost of the improvement by § 14-90-801, but no additional assessment shall be made in excess of five percent (5%) of the value of the real property in the district as shown by the last county assessment, and not more than ten percent (10%) of the additional assessment of benefits shall be collected in any one (1) year.

**History.** Acts 1909, No. 245, § 3, p. 742; C. & M. Dig., § 5730; Pope's Dig., § 7386; A.S.A. 1947, § 20-319.

**14-91-604. Readjustment of assessment.**

The assessment made pursuant to § 14-91-601 may be annually readjusted according to additional improvements upon the lands by board of assessors. Immediately upon the recording of the assessment, notice thereof shall be inserted in some newspaper, and appeals may be filed and shall be heard and disposed of all in the same manner as provided by law for publishing notice of and protesting against the original assessment for the improvement.

**History.** Acts 1909, No. 245, § 2, p. 742; C. & M. Dig., § 5729; Pope's Dig., § 7385; A.S.A. 1947, § 20-318.

**Cross References.** Correction, revision, and reduction of original assessments, § 14-90-601 et seq.



**14-91-605. Law controlling assessments.**

Under this subchapter, the publication of a copy of the ordinance, the infliction of a penalty for nonpayment, and the enforcement and foreclosure of the lien shall all be had and done in the same manner as is provided in reference to the original assessment.

**History.** Acts 1909, No. 245, § 5, p. 742; C. & M. Dig., § 5732; Pope's Dig., § 7388; A.S.A. 1947, § 20-321.

**SUBCHAPTER 7 — NEW DISTRICTS TO ENLARGE OR RECONSTRUCT EXISTING WORKS****SECTION.**

14-91-701. Formation generally.

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**Effective Dates.** Acts 1915, No. 5, § 11: approved Jan. 27, 1915. Emergency clause provided: "This Act being for the immediate preservation of the public peace and safety, an emergency is declared, and this Act shall take effect and be in force from and after its passage."

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**14-91-701. Formation generally.**

(a) It shall be lawful for an improvement district in a city or town to be formed for the purpose of enlarging or reconstructing waterworks and electric light plants previously constructed by other improvement districts or owned or controlled by the city or town council, and extending the pipes, wires, and other equipment for it.

(b) The district shall be organized and all the proceedings in it had in pursuance of the provisions of the laws governing improvement districts in cities and towns.

(c) The council, the commissioners of the improvement district board, and assessors shall have the powers and duties prescribed thereby.

(d) When the improvement districts are organized, possession and control of the waterworks and electric light plants shall be taken by the commissioners in the districts.

(e) When the work of the improvement is finished and all debts of the preceding districts have been paid, the control of the waterworks and electric light plants shall pass to the council, as provided by § 14-91-402.

(f) The commissioners may secure the payment of any borrowed money by a mortgage on the plant and a first lien pledge and mortgage of the assessment of benefits made on the reconstruction.

**History.** Acts 1915, No. 5, § 10; C. & M. Dig., § 5727½; A.S.A. 1947, § 20-338.

## SUBCHAPTER 8 — IMPROVEMENT OF WATER PLANTS FOR VETERANS' HOSPITALS

### SECTION.

14-91-801. Authority generally.

14-91-802. Assistance by city.

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**Effective Dates.** Acts 1932 (2nd Ex. Sess.), No. 3, § 5: approved Mar. 23, 1932. Emergency clause provided: "It being ascertained that there is great demand in many of the cities of this State for such extension, improvements and developments of such waterworks and plants, and

for the financing thereof as herein provided, and that the public peace, health and safety of the citizens of such cities is thereby imperiled, therefore an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage."

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### 14-91-801. Authority generally.

All water improvement districts in any and all of the cities of the first and second class of the State of Arkansas that may be designated as sites for United States Veterans' Hospitals and their respective boards of managers and boards of improvements, or any of them, are authorized to extend, develop, and improve water plants and systems, and to acquire real estate as to them may seem necessary and advisable for this purpose. They may issue their certain negotiable promissory obligations in payment thereof, payable out of the surplus, from year to year, of the revenue arising from the operation of any such plant of the district, after all operating expenses have been paid or provided for, and to sell and negotiate such obligations for the purpose of securing cash funds with which to so extend, develop, and improve the plant and to acquire real estate.

**History.** Acts 1932 (2nd Ex. Sess.), No. 3, § 1; A.S.A. 1947, § 20-325.

### 14-91-802. Assistance by city.

All cities of the first and second class in this state are authorized, by ordinance, in consideration of the benefits to be received by the cities by reason of the matters set out in § 14-91-801, to obligate itself to aid or assume the obligations of the improvement districts, or of its board of managers or board of improvement, payable out of the surplus revenues of the city, after the necessary expenses of the city have been paid or provided for. They shall be paid out of such surplus, from year to year, until the obligations assumed shall have been fully paid.

**History.** Acts 1932 (2nd Ex. Sess.), No. 3, § 2; A.S.A. 1947, § 20-326.

prior action, see Acts 1932 (2nd Ex. Sess.), No. 3, § 3.

**Publisher's Notes.** As to validation of

**SUBCHAPTER 9 — SEWER CONNECTIONS TO LANDS OUTSIDE DISTRICT****SECTION.**

14-91-901. Authority to connect.

14-91-902. Terms of connection.

**SECTION.**

14-91-903. Recording required.

**Cross References.** Connections to suburban sewer districts, § 14-249-103.

**Effective Dates.** Acts 1941, No. 53, § 4: approved Feb. 13, 1941. Emergency clause provided: "By reason of the need of sanitary sewer connections in our cities and towns, an emergency is hereby declared and this act shall take effect and be in force from and after its passage."

Acts 1969, No. 304, § 4: Mar. 21, 1969. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that many purchas-

ers of land have been misled and deceived and put to extra expense by reason of their lack of knowledge that land purchased by them is subject to unpaid connection charges for necessary sanitary sewer facilities and that only through enactment of this bill will this situation be remedied. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

**14-91-901. Authority to connect.**

All municipal sewer improvement districts shall have authority to permit lands outside the boundaries of the district to connect sewer lines serving the lands with the sewer lines and mains of the district and to make a charge for this privilege.

**History.** Acts 1941, No. 53, § 1; A.S.A. 1947, § 20-332.

**14-91-902. Terms of connection.**

(a) The commissioners on the board of a municipal sewer improvement district shall have the right to consent to or refuse to allow connections within their discretion.

(b)(1) The connections shall be made on such terms as the commissioners may dictate. However, no lands outside of the district shall be permitted to connect with the sewer line of the district except upon payment to the district of a sum equal to the charge made against similarly benefited lands within the district.

(2) In case such connections have been made without the payment of a charge for the connection, the district may refuse to allow sewer service to the lands until permission for the connection is granted and the charge for the service is paid to the district.

**History.** Acts 1941, No. 53, § 2; A.S.A. 1947, § 20-333.



## CASE NOTES

### ANALYSIS

Connection charge.  
Discretion of commissioners.

#### Connection Charge.

This section imposes a duty on the commissioners to make a connection charge when the land to be served is outside the sewer improvement district. *Morrilton Homes, Inc. v. Sewer Imp. Dist. No. 4*, 226 Ark. 22, 287 S.W.2d 581 (1956).

Where proof showed that sewer improvement district's assessment of benefits to landowners within the district averaged \$100 per lot, an assessment of \$30.00 per lot for sewer connections outside the district where corporation which connected to the district's system laid its

own mains was not excessive. *Morrilton Homes, Inc. v. Sewer Imp. Dist. No. 4*, 226 Ark. 22, 287 S.W.2d 581 (1956).

#### Discretion of Commissioners.

The commissioners have the right to exercise their discretion as to whether connections with sewer line shall be permitted outside the improvement district. *Sewer Imp. Dist. No. 4 v. Davis*, 227 Ark. 755, 301 S.W.2d 15 (1957).

The mere fact that property owners have sewer lines from their property connected to the improvement district system for more than three years did not give them a vested right to use the sewer system without consent. *Sewer Imp. Dist. No. 4 v. Davis*, 227 Ark. 755, 301 S.W.2d 15 (1957).

### 14-91-903. Recording required.

(a) In any instance where a municipal sewer improvement district has contracted for the furnishing of sanitary sewer service to lands lying outside the boundaries of the district, that district shall cause to be recorded, in the land records of the county in which the land is located, an instrument containing:

(1) A full and complete description of the lands which are subject to the contract;

(2) A fair summary of the terms and provisions of the contract; and

(3) Such other information as might be pertinent to the transaction.

(b) If the instrument referred to in subsection (a) of this section is not recorded as there required, a subsequent purchaser of all, or any part, of the land covered by the contract shall have the right to connect improvements located on the lands to the sanitary sewer lines of the district without charge for the connections, unless the purchaser had actual notice of the contract and the terms thereof concerning connection charges.

**History.** Acts 1969, No. 304, §§ 1, 2;  
A.S.A. 1947, §§ 20-333.1, 20-333.2.

## SUBCHAPTER 10 — SALE OF WATERWORKS

### SECTION.

14-91-1001. Authority to sell.

14-91-1002. Proceedings to approve sale.

14-91-1003. Purchase of waterworks.

### SECTION.

14-91-1004. Effect of sale.

14-91-1005. Outstanding bonds.

14-91-1006. Priority of suits.

**Cross References.** Lease or sale of public utilities, §§ 14-199-301 et seq., 14-219-101 et seq.

**Effective Dates.** Acts 1929, No. 103, § 6: approved Mar. 7, 1929. Emergency clause provided: "It is ascertained and hereby declared that there are in various cities and towns in this State waterworks which are now so inadequate to meet the requirements of the inhabitants of such cities and towns that they are prejudicial to the public health and inadequate for

the extinction of fires; and that such cities and towns and such improvement districts owning such waterworks have no means with which to make the necessary improvements, repairs and extensions, so that there is an immediate menace to the public health and safety. Therefore an emergency is declared, and for the preservation of the public peace, health and safety this act shall go into immediate operation and take effect upon its passage."

**14-91-1001. Authority to sell.**

(a) Wherever in any city or incorporated town in this state a waterworks plant and a sewer system have been constructed by the same improvement district as part of a single improvement, the city or town council shall have authority to sell the waterworks.

(b)(1) To that end, the council shall select a competent engineer familiar with the waterworks plants, who shall appraise the waterworks and file with the clerk or recorder of the city or town his appraisalment in writing.

(2)(A)(i) Thereupon, it shall be the duty of the clerk or recorder of the city or town to publish a notice.

(ii) The notice may be in the following form:

"NOTICE IS HEREBY GIVEN that the appraiser appointed by the City (or Town) Council of the City (or Town) of ..... has appraised the value of the waterworks system constructed by said City (or Town; or by ..... Improvement District No.....) at the sum of ..... Dollars (\$.....).

.....  
City Clerk (or Recorder)."

(B) The notice shall be published once a week for four (4) weeks.

(c)(1) Unless some property owner of the city or town brings suit in the chancery court within thirty (30) days from the first publication of the notice to review the appraisal, the appraisal shall stand and be conclusive upon all parties.

(2) If such a suit is brought, it shall be treated as a matter of public interest and advanced in all courts, and all appeals therein must be taken and perfected within thirty (30) days.

(3) If at the end of the period of thirty (30) days no suit has been brought to set aside the appraisal, the appraisalment shall be conclusive of the value of the property.

**History.** Acts 1929, No. 103, § 1; Pope's Dig., § 7395; A.S.A. 1947, § 20-327.

**14-91-1002. Proceedings to approve sale.**

(a) The council of any municipal corporation may sell its system of waterworks, together with the right to operate it, when they shall determine, by resolution adopted by a majority vote of the council, that it would be for the best interest of the town or city that the sale be consummated.

(b)(1) Before any such sale shall be consummated, there shall be filed, within one (1) year after the adoption of the resolution, with the council a petition signed by a majority in value as shown by the last county assessment of the owners of real property within the town or city proposing to make the sale, asking that the sale be made and stating the minimum price at which the sale shall be made, which shall in no event be a sum less than the appraised value thereof.

(2)(A) Upon the filing of this petition, the council of the city or town shall give notice by publication once a week for two (2) weeks in some newspaper published in the county in which the city or town is located, advising the owners of real property within the city or town that on a day therein named the council of the city or town will hear the petition and determine whether those signing it constitute a majority in value of the owners of real property.

(B)(i) At the meeting named in the notice, the owners of real property within the city or town shall be heard before the council, which shall determine whether the signers of the petition constitute a majority in value.

(ii) The finding of the council shall be conclusive unless, within thirty (30) days thereafter, suit is brought to review its action in the chancery court of the county in which the city or town lies.

(C) In determining whether those signing the petition constitute a majority in value of the owners of the real property within the city or town, the council and the chancery court shall be guided by the records of deeds in the office of the recorder of the county and shall not consider any unrecorded instruments.

**History.** Acts 1929, No. 103, § 2;  
Pope's Dig., § 7396; A.S.A. 1947, § 20-328.

**14-91-1003. Purchase of waterworks.**

(a)(1) The purchaser of the water system in any city or town in this state shall pay at least the appraised value for the plant.

(2)(A) If the purchaser desires to assume an amount of bonds equal to the purchase price outstanding against the plant, he shall give to the city or town an indemnifying bond in some good surety company, conditioned for the payment of the interest and the retiring of the bonds, so assumed by the purchaser, as they may become due and payable.

(B) Should the purchaser desire to take up the amount of bonds that may be adjudged against the waterworks, as shown by the



purchase price, he may do so by making the necessary arrangements for retiring them with the holders of the bonds.

(b)(1)(A) The transfer of the properties shall be evidenced by a deed of conveyance in the usual form and with the usual covenants of warranty.

(B) A lien against the property sold shall be retained in the deed for all of the unpaid sale price with the right upon default of payment of any interest or indebtedness when it falls due to declare all of the unpaid sale price due and payable and to proceed with a foreclosure of the lien so retained.

(2) The deed of conveyance shall be executed on behalf of the city or town by the clerk or recorder, when authorized by the city or town council.

(3) A receipt duly executed by the treasurer of the city or town shall release the purchaser from further liability for the payment of the amount of money received.

(4) If payment is made in cash, it shall be applied only to the retirement of the bonds of the district.

(c) Upon the payment of all indebtedness for which a lien may be retained in a deed of conveyance, the mayor, or recorder, or clerk of the town or city is authorized and directed to satisfy the lien by a deed of release, or by marginal entry upon the deed record where it may be recorded.

**History.** Acts 1929, No. 103, § 3; Pope's Dig., § 7397; A.S.A. 1947, § 20-329.

#### **14-91-1004. Effect of sale.**

The sale of the property as mentioned in this subchapter shall not work a forfeiture of the corporate entity of the improvement district. Rather, it shall be maintained for the operating of the sewer system which is to be retained by the district and the town and city.

**History.** Acts 1929, No. 103, § 3; Pope's Dig., § 7397; A.S.A. 1947, § 20-329.

#### **14-91-1005. Outstanding bonds.**

The remainder of the outstanding bonds issued by a municipal waterworks improvement district shall remain as an indebtedness against it and shall be paid by a levy on the assessment of benefits of the district in force at the time of a sale.

**History.** Acts 1929, No. 103, § 4; Pope's Dig., § 7398; A.S.A. 1947, § 20-330.

**14-91-1006. Priority of suits.**

All suits in reference to the sale of municipal waterworks shall be deemed matters of public interest and shall be advanced in all courts and heard at the earliest possible moment, and appeals therein must be taken and perfected within thirty (30) days.

**History.** Acts 1929, No. 103, § 5; Pope's Dig., § 7399; A.S.A. 1947, § 20-331.

**SUBCHAPTER 11 — CHANGE OF PLANS IN CITIES WITH A POPULATION EXCEEDING 60,000****SECTION.**

- 14-91-1101. Applicability.
- 14-91-1102. Authority generally.
- 14-91-1103. Revised plans.
- 14-91-1104. Plans not exceeding cost limit.

**SECTION.**

- 14-91-1105. Plans exceeding cost limit.
- 14-91-1106. Borrowing of money.

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**Effective Dates.** Acts 1925, No. 238, § 8: approved Mar. 27, 1925. Emergency clause provided: "This act being necessary for the immediate preservation of the pub-

lic peace, health and safety, an emergency is hereby declared to exist, and this act shall be in force from and after its passage."

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**14-91-1101. Applicability.**

This subchapter shall apply only to improvement districts created in cities having a population exceeding sixty thousand (60,000) inhabitants, as shown by the federal census immediately preceding the proceedings authorized by this subchapter.

**History.** Acts 1925, No. 238, § 2; A.S.A. 1947, § 20-303.

**14-91-1102. Authority generally.**

The commissioners on the boards of improvement districts formed in cities having more than sixty thousand (60,000) inhabitants are authorized and empowered to change the plans for the improvement either before or after the assessments of benefits are made in their districts and to make and complete the improvement in them according to the changed plans.

**History.** Acts 1925, No. 238, § 3; A.S.A. 1947, § 20-304.

**14-91-1103. Revised plans.**

(a) At any time before the completion of the improvements in the improvement districts, the commissioners on the boards of improvement may make revised plans for the improvements involving changes in the original plans and complete the improvements according to the changed plans.

(b) As soon as the commissioners have formed the revised plans for the improvements, they shall file a report thereof with the city clerk, together with an estimate of the cost of completing the improvements according to the changed plans.

**History.** Acts 1925, No. 238, § 4;  
A.S.A. 1947, § 20-305.

**14-91-1104. Plans not exceeding cost limit.**

(a) If the estimate of cost of making and completing the improvements according to the changed plans does not exceed the limit of cost to be borne by the landowners in the improvement district as limited by the statute in force at the time the second or majority petition is filed, or by a majority petition, the assessors shall immediately proceed to make a reassessment of benefits to be derived from the making of the improvements according to the changed plans.

(b) The reassessment shall be filed, advertised, and heard, and the time for any complaints against it shall be limited, as is provided for on the original assessment in the district.

**History.** Acts 1925, No. 238, § 4;  
A.S.A. 1947, § 20-305.

**14-91-1105. Plans exceeding cost limit.**

(a)(1) If the estimate of cost in any improvement district on any revised or changed plans shall exceed the amount limited by statute in force at the time the second or majority petition is filed with the city clerk, or the amount limited by the second or majority petition, the commissioners shall not proceed with the improvements according to the changed plans unless, within one (1) year after the changed plans are filed with the city clerk signed by a majority in value of the owners of real property in the district as shown by the last assessment for state and county taxes and a hearing is had thereon after notice by publication has been given for the time and in the manner required for such hearings on second or majority petitions in improvement districts in cities and towns, the city council finds that the petition contains the consent of a majority in value of the owners of real property in the district, as provided for in this section.

(2) The finding of the city council on the petition shall be conclusive, subject to attack in the chancery court within thirty (30) days after the finding is made, and not thereafter.



(3) The petition of the property owners provided for in this section shall state that the petitioners consent to the making and completion of the improvements in the district according to the changed plans and that the cost thereof be assessed against the real property in the district.

(b)(1) If the city council shall find that a majority of the landowners in the improvement district have petitioned for the making and completion of the improvements according to the revised plans, as provided for in subsection (a) of this section, the assessors shall, as soon as possible, make a reassessment of the benefits to be derived from the making and completion of the improvements according to the changed plans.

(2) The reassessment shall be filed, notice thereof given by publication, and shall be heard by the council for the time and in the manner provided by law on the original assessment in the district, with the right of any property owner to appeal to the chancery court within the time, after the passage of the ordinance levying the installments of the reassessment of benefits, provided by law for appeals from assessments of benefits in improvement districts in cities and towns, and not thereafter.

**History.** Acts 1925, No. 238, §§ 5, 6;  
A.S.A. 1947, §§ 20-306, 20-307.

### **14-91-1106. Borrowing of money.**

In order to secure funds for the making and completion of the improvements in the improvement district according to the changed plans, the board of improvement may borrow money not exceeding the full amount of the estimated cost of making and completing the improvements, with ten percent (10%) added for overhead cost, at a rate of interest not exceeding eight percent (8%) per annum, and may issue negotiable notes or bonds of the district for the payment thereof, and pledge all uncollected assessments for the security of the payment of the notes or bonds.

**History.** Acts 1925, No. 238, § 7;  
A.S.A. 1947, § 20-308.

## **CHAPTER 92**

## **SUBURBAN IMPROVEMENT DISTRICTS**

### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. SUBURBAN IMPROVEMENT DISTRICTS GENERALLY.
3. CONSOLIDATED SYSTEMS FOR JOINT OPERATION.
4. SALE OF PROPERTY BY DISTRICT.
5. SYSTEMS TURNED OVER TO MUNICIPALITIES.
6. COLLECTION OF TAXES.

## SUBCHAPTER 1 — GENERAL PROVISIONS

## SECTION.

14-92-101. Assessments delinquent for more than two years.

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**Preambles.** Acts 1943, No. 198 contained a preamble which read: "Whereas, in the period of prosperity prior to the depression beginning in 1929, certain owners of property in the less populated and developed areas of cities and towns and in areas adjacent thereto gave consent to and joined in the formation of various kinds of improvement districts organized for the purpose of providing for the owners of lands of such areas public facilities and conveniences, and such improvement districts did construct in such areas such facilities and improvements and to pay for the same, issued and sold bonds which are in fact a first mortgage on all the lands in the districts; and

"Whereas, this debt was created in the belief of the owners of the property that the period of prosperity was a permanent period, and that the facilities and conveniences provided by the district would lead to the improvement and building up of the less populated and unimproved area of the district; and

"Whereas, many of such districts had sold their bonds and had completed the installation of the improvements provided for only a short time before the country was struck by the depression, and as a result all development ceased. Persons who had purchased vacant lots for the purpose of building thereon, found it impossible to finance buildings and as a result lost interest in paying special improvement district taxes or county and state taxes on their property; and

"Whereas, during the depression years the Federal Government, in order to relieve unemployed labor, created the Works Progress Administration and the said W. P. A. proposed to states, counties, cities and improvement districts to pay the entire expense of labor and a substantial portion of the cost of the material used in making various public improvements, and under this agency or authority public facilities and conveniences of the same kind and character as those theretofore con-

structed under the improvement district system of bonded indebtedness were made in other areas at a cost of from one-sixth to one-third of the bonded indebtedness of areas included in improvement districts, and thereby lessened the value and attractiveness of property laboring under the debt of a regular improvement district; and

"Whereas, it is now an evident fact that in many cases ten or more years annual assessments of improvement district taxes have accumulated on the lands of such improvement districts and the sum necessary to redeem such lands, together with state and county taxes which remain unpaid, is too much for the average man to pay in one installment, and such areas are now and must remain blighted until some legal method is devised to relieve such property from accumulation of delinquent improvement district taxes and to devise a method for the payment of such accumulation of taxes in installments distributed in the future; and

"Whereas, it is evident that the best method to place such property on a current basis and to utilize the facilities and conveniences, such as pavements, sidewalks, water, light, and sewer lines now existing thereon is to provide a plan whereby the accumulation of assessments may be paid in annual installments instead of a lump sum..."

**Effective Dates.** Acts 1943, No. 198, § 2: approved Mar. 11, 1943. Emergency clause provided: "It is hereby ascertained and declared that the provisions of this act are necessary to aid said improvement districts to work out their affairs by making conditions so that more property owners would pay taxes or assessments to the district, to the end that the district can meet its bonded indebtedness and have funds left to take care of necessary maintenance of the improvements constructed, for without sufficient revenue, the districts cannot maintain their water systems or fire hydrants and a continuous

supply of water is necessary for the health and protection against fire of the inhabitants and property of the district; similarly necessary repairs of pavements are essential to the safety of the driving public, a regular maintenance of sewers is necessary to prevent stoppages which frequently occur and if not corrected will cause sewage to pour from the manholes and greatly endanger the health of the entire community. These repairs and

maintenance of such utilities, as well as the repair and maintenance of other improvements made by such districts are necessary for the public peace, health and safety, and for these reasons it is ascertained and declared that the immediate operation of this act is necessary for the preservation of the public peace, health and safety. An emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

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#### **14-92-101. Assessments delinquent for more than two years.**

(a)(1) When, in any improvement district composed of territory adjacent to a city created under any special or general act, for the purpose of grading, draining, paving, curbing, or guttering streets and highways; laying sidewalks; constructing waterworks systems or laying pipes connected with waterworks systems; laying gas pipelines connecting with gas systems; constructing electric lines for light and power connecting with the lines of electric light systems; and constructing independent sewer systems or systems of sewers connecting with the sewer systems of other districts or cities; or for more than one (1) of these purposes, any annual installments of assessments are delinquent for more than two (2) years, its board of improvement, in its discretion, may adopt a resolution finding the amount of the balance of unpaid assessment of benefits against each tract or parcel of land within the district and providing that the balance shall be the assessment of benefits against each respective tract or parcel of land.

(2) No annual installment of assessment against any property which assessment is, on the date of any assessment made under this section, barred by any statute of limitation or on which suit for the collection thereof has not been brought within the time provided or limited by law, or which has been held void by a court of competent jurisdiction, shall be included in the new assessment or in the balance of unpaid assessment of benefits.

(b) After the date of the resolution and the filing of the assessment of benefits, the annual levies on the assessment of benefit shall be collected on the respective assessment of benefits as thus fixed against each tract or parcel of land.

(c)(1)(A) A copy of the resolution, certified by the secretary of the district, shall be incorporated in the assessment book, which shall be filed with the county clerk.

(B) In the making of the assessment book, the assessors shall follow the provisions of the legislation under which the respective district was created.

(2)(A) Upon the filing of the assessment book, the secretary of the board shall thereupon give notice of its filing in a publication of one (1) insertion in a newspaper published and having a bona fide circulation in the county.



(B) This notice may be in substantially the following form:

“Notice to landowners of real property in ..... Improvement District No. .... of ..... County, Arkansas. Notice is hereby given that the Board of Commissioners of ..... Improvement District No. .... of ..... County, Arkansas, has filed in the office of the County Clerk of ..... County, the assessment book of the district, in which is incorporated a resolution fixing the assessment of benefits on each tract or parcel of land within the district, as authorized by Act No. .... of the regular session of the General Assembly of Arkansas for the year 1943, (giving the number of this act) and the same is now open to inspection. All persons wishing to be heard on said assessment of benefits will be heard by the assessor or assessors and the Commissioners of the District between the hours of 10 a.m. and 12 noon and between the hours of 2 p.m. and 4 p.m. at the office of the County Clerk of ..... County, Arkansas, on the .... day of ....., 19 .....

“Given this ....day of ....., 19 .....

.....  
Secretary.  
Improvement District No.  
of ..... County,  
Arkansas.”

(d)(1) On the day named in the notice, which shall not be less than ten (10) days from the date of the publication of the notice, it shall be the duty of the assessors and the board of improvement to meet at the place named to hear all complaints as to the correctness of the assessments of benefits. Their determination, evidenced by a resolution, shall be final unless suit is brought in chancery court within thirty (30) days to review it.

(2) Any appeal to the Supreme Court from the chancery court shall be taken and perfected within thirty (30) days and shall be deemed a matter of public interest to be disposed of at the earliest possible moment.

(e)(1) The assessments of benefits fixed by the board of improvement shall supplant all prior assessment or reassessments of benefits.

(2) All annual installments of assessments which were delinquent at the date of any assessment made under this section shall be deemed cancelled on the completion of the new assessment.

(f) The assessment of benefits shall continue to bear interest as provided in the legislation under which the district was organized.

**History.** Acts 1943, No. 198, § 1;  
A.S.A. 1947, § 20-728.

CASE NOTES

**Appeals.**

The improvement district must act for the benefit of all the affected property owners, and if any property owner feels aggrieved, he has the right to have the decision of the district judicially reviewed.

Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

SUBCHAPTER 2 — SUBURBAN IMPROVEMENT DISTRICTS GENERALLY

SECTION.

- 14-92-201. Definitions.
- 14-92-202. Applicability of 1981 amendments.
- 14-92-203. Penalty.
- 14-92-204. Hearing prior to filing petition to form district.
- 14-92-205. Petition to form district.
- 14-92-206. Hearing on petition and determination.
- 14-92-207. Board of commissioners generally.
- 14-92-208. Interest of commissioners in purchase, acquisition, or donation.
- 14-92-209. Removal of commissioners — Vacancies.
- 14-92-210. Powers of board generally.
- 14-92-211. Bond of contractors.
- 14-92-212. Payments generally — War-rants.
- 14-92-213. Payments to contractor.
- 14-92-214. Legal services in organizing.
- 14-92-215. Sale of unnecessary materials.
- 14-92-216. Planning by board.
- 14-92-217. Change of plans.
- 14-92-218. Petition by property owners to extend improvements.
- 14-92-219. Purposes for which district or-ganized.
- 14-92-220. Powers of districts generally.
- 14-92-221. Corporate powers.
- 14-92-222. Right and power of eminent domain.

SECTION.

- 14-92-223. Sale of land.
- 14-92-224. Priority of cases.
- 14-92-225. Assessment of benefits and damages.
- 14-92-226. Filing and notice of assess-ment.
- 14-92-227. Reassessment.
- 14-92-228. Levy of tax.
- 14-92-229. Interest on assessments.
- 14-92-230. Extension and collection of taxes.
- 14-92-231. Subsequent levies.
- 14-92-232. Payment of taxes — Enforce-ment.
- 14-92-233. Notice of delinquency.
- 14-92-234. Notes, bonds, or evidences of debt.
- 14-92-235. Payment of bonds.
- 14-92-236. Public contributions to road or street improvement dis-tricts.
- 14-92-237. Dissolution or conversion of district.
- 14-92-238. Lien for preliminary ex-penses.
- 14-92-239. Continued existence of dis-trict.
- 14-92-240. Districts of less than six thou-sand lots — Alteration of number of and method of selecting commissioners.

**Cross References.** Formation of municipal improvement districts outside cities or towns, § 14-88-201.

Powers of deputies, § 14-15-503.

Preliminary expenses, levy of tax and issuance of bonds, § 14-86-701 et seq.

Proceedings to correct errors or irregularities in formation of district, § 14-86-401 et seq.

**Preambles.** Acts 1941, No. 41 contained a preamble which read: "Whereas, the Federal Government Has Made Available to States and to Their Sub-Divisions, Funds for Improvements Through the Work Projects Administration and Their Agencies, and

"Whereas, Citizens of Cities and Towns Have Availed Themselves of the Funds Through Formation of Improvement Dis-tricts for Paving and for Other Purposes; and

"Whereas, Under Existing Arkansas Statutes, Persons Residing Outside Cities and Towns Are Not Permitted to Form Such Improvement Districts and Are Thus Prohibited From Benefits of Funds From the Government of the United States.

"Now Therefore, It Is Declared to Be the Purpose of This act to Make Provision for Formation of Improvement District on the Outside of and Adjacent to Cities Having a Population of 5,000 or more."

**Effective Dates.** Acts 1941, No. 41, § 29: approved Feb. 13, 1941. Emergency clause provided: "It is hereby ascertained and declared that many suburban homes are liable to be destroyed by fire for the want of waterworks systems, and the owners thereof are liable to be killed or injured by such fires; that many suburban sections are in need of waterworks systems and sewers for the benefit of public health; that gas light is in many cases of suburban property essential for the public safety; that telephone systems connecting suburban property with the adjacent cities are often necessary to the public safety and health, being essential to give notice of fires, lawless acts and uprisings and for calling physicians to attend the sick; and for these reasons it is ascertained and declared that the immediate operation of this act is necessary for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1951, No. 115, § 2: effective on passage.

Acts 1951, No. 233, § 3: Mar. 6, 1951. Emergency clause provided: "Whereas there is at this time discrimination between Municipal and Suburban Improvement Districts in the rates of commission, and such discrimination is detrimental to the welfare of the state, an emergency is declared to exist and this Act shall be in full force and effect upon and after its passage and approval."

Acts 1953, No. 420, § 4: approved Mar. 30, 1953. Emergency clause provided: "Whereas, the existing statutes of the State of Arkansas with relation to rural fire protection districts are inadequate to provide fire protection to rural districts in the State of Arkansas, and whereas the public peace, health and safety is threatened by the lack of proper rural fire protection, an emergency has arisen, and does now exist, and is hereby declared, and this act shall be in full force and effect from and after its passage."

Acts 1957, No. 331, §§ 2, 3: Jan. 1, 1957. Emergency clause provided: "It is hereby determined by the General Assembly that the allowance for deputy hire by County Clerks and Tax Collectors in extending and collecting improvement district taxes is wholly inadequate and that the immediate passage of this Act is nec-

essary in order to correct said condition. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved March 27, 1957.

Acts 1963, No. 150, § 2: Mar. 4, 1963. Emergency clause provided: "It is hereby found and declared by the General Assembly that there is no adequate statutory procedure for the dissolution of suburban improvement districts which have surplus funds which are not necessary for the repair and maintenance of the district's facilities, and that substantial amounts of excess collections are lying idle and should be refunded to property owners in said districts; and that an emergency is therefore declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1967, No. 286, § 8: Mar. 10, 1967. Emergency clause provided: "It is hereby ascertained and declared that at the present time there is no provision of law whereby suburban improvement districts may be organized for the purpose of accepting as gifts from the Federal Government and others of recreational facilities and for the maintenance of same; further, that the present laws relative to suburban improvement districts are not specific as to authority and purpose to the extent that districts have not in many instances been organized and the suburban residents of the State of Arkansas have suffered from lack of fire protection, waterworks systems, sewers and other necessities for the health, welfare and safety of suburban residents of the State of Arkansas; for these reasons it is ascertained and declared that the immediate operation of this Act is necessary for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage and approval."

Acts 1969, No. 230, § 5: Mar. 10, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need in some parts of the State for additional hospital facilities, and that the construction and equipment of many of these facil-



ities can be financed only by suburban improvement districts. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 16, § 3: Mar. 13, 1970. Emergency clause provided: "It is hereby ascertained and declared that the present law of suburban improvement districts does not adequately limit the financial interests of the members of the Board of Commissioners in dealings with said Districts; and further, that there is an immediate need to limit the amount of annual instalments of assessed benefits, which may be collected for the purposes of purchasing, maintaining or operating certain improvements in said Districts. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 53, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1971, No. 263, § 3: Mar. 11, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the requirements for the formation of water and sewer improvement districts under the present suburban improvement district law are too strenuous and creates unnecessary difficulties in the formation of these districts; that since these districts are created for the sole purpose of benefitting the property owners, the proper persons to determine

whether a district is to be created should be the majority in value of the property owners of such proposed district; and that only by the passage of this Act can this be accomplished. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall become effective from and after its passage and approval."

Acts 1971, No. 360, § 5: became law without Governor's signature, Mar. 23, 1971. Emergency clause provided: "It has been found and is hereby declared that the financing of the public improvements to which this Act pertains requires that its provisions be not inconsistent with each other, that necessary administrative powers of its commission be clearly provided therein, and that it have such powers as will avoid unnecessary duplication of public districts, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975 (Extended Sess., 1976), No. 1213, § 4: Feb. 12, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that as a result of several developments in recent months ambulance services in many areas of the State are totally inadequate to serve the needs of the residents of such areas; that there is presently no law authorizing the establishment of improvement districts for the purpose of providing ambulance services; that this Act is designed to specifically authorize the establishment of such districts to permit residents of any defined area to establish an ambulance service improvement district to assure adequate ambulance services to the residents of this district and should be given effect immediately in order that appropriate steps may be taken at the earliest possible date to establish such districts in those areas where it is necessary to do so in order to provide adequate ambulance services. Therefore, an emergency is hereby declared to exist

and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 474, § 9: Mar. 13, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to Suburban Improvement Districts and Central Business Improvement Districts are unduly restrictive with respect to the maximum interest rates that such districts are allowed to pay and receive and that this Act is designed to permit such districts to pay and receive the maximum lawful rates of interest; that Central Business Improvement Districts are now severely hampered by their inability to issue revenue bonds to acquire property in the boundaries of the District and that this Act will authorize the issuance of such bonds and will thereby enable such districts to be more effective in eliminating urban blight and decay; that this Act should be given effect immediately to help solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 510, § 11: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the establishment and dissolution of suburban improvement districts is unclear in many areas and is not adequate to protect property owners in some cases; that this Act is designed to clarify said law and to assure adequate protection to property owners and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 703, § 6: Mar. 24, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment

of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1983, No. 524, § 2: Mar. 17, 1983. Emergency clause provided: "It is hereby found and declared by the General Assembly that the present procedure of requiring suburban improvement district warrants to be signed by at least two of the commissioners of the district is unnecessary and unduly cumbersome as to those suburban improvement districts issuing a large number of warrants, resulting in delays of payment of persons supplying goods and services to the district. An emergency is therefore declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1987, No. 1008, § 4: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1213 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 37, § 7: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulation of small water and sewer utilities as 'public utilities' under the jurisdiction of the Public Service Commission generally imposes heavy regulatory costs upon the consumers, so that the cost of preparing a rate case alone may equal or exceed the other total revenue requirements of those utilities; that the effect of regulation is often to increase costs that are proportionately far in excess of the benefits of regu-



lation; that customers of small water and sewer utilities may be better off in the long run if they could simply buy their water or sewer utility outright and run it themselves; and that this Act is immediately necessary to remedy the present situation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 281, § 6: July 1, 1991. Emergency clause provided: "It has been found and determined by the General Assembly that present law provides for col-

lection of delinquent suburban improvement district taxes by inclusion of the suburban improvement taxes and penalty in the county collector's tax sale for ad valorem real property taxes. Such sale has been abolished, leaving no clear remedy for delinquent suburban improvement taxes. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1991 and shall be applicable to suburban improvement district taxes due and payable on or before October 10, 1991."

## RESEARCH REFERENCES

**UALR L.J.** Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

## CASE NOTES

### Constitutionality.

Former statute authorizing the creation of suburban improvement districts was not invalid as an invasion of the jurisdiction of the county courts in the establishment of highways. *Newton v. Altheimer*, 170 Ark. 366, 280 S.W. 641 (1926); *Reed v. Paving Dist. No. 2*, 171 Ark. 710, 286 S.W. 829 (1926); *Morehart v. Mabelvale Rd.*

*Imp. Dist.*, 178 Ark. 219, 10 S.W.2d 856 (1928) (decisions under prior law).

This subchapter is not void as making an unreasonable or arbitrary classification. *Murphy v. Cook*, 202 Ark. 1069, 155 S.W.2d 330 (1941).

This subchapter is general legislation and not a local act. *Murphy v. Cook*, 202 Ark. 1069, 155 S.W.2d 330 (1941).

## 14-92-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Last federal census" means the most recent federal census taken prior to the filing of any petition as provided in this subchapter for the formation of any suburban improvement district;

(2) "Majority in value" means a majority in assessed value as shown by the latest county assessment records for general taxes;

(3) "Land" or "real property" means all property subject to taxation for the purposes of this subchapter;

(4) "County court," "county judge," or "county clerk" means "circuit court," "circuit judge," or "circuit clerk" in the cases where the district contains lands in more than one (1) county;

(5) "Nearby municipalities" means municipalities within ten (10) miles of any boundary of the district.



**History.** Acts 1941, No. 41, §§ 1, 4, 5, 263, § 1; 1981, No. 510, § 1; A.S.A. 1947, 23; 1951, No. 115, § 1; 1967, No. 286, §§ 20-701, 20-704, 20-705, 20-723. §§ 1-3; 1969, No. 230, §§ 1, 2; 1971, No.

### 14-92-202. Applicability of 1981 amendments.

(a) The provisions of Acts 1981, No. 510, shall not apply to districts in existence on March 16, 1981, and these districts shall continue to be governed by the law in effect immediately prior to that date.

(b)(1) Upon the petition of thirty-five percent (35%) of the realty owners of a district in existence on March 16, 1981, the district shall be subject to the provisions of § 14-92-209 concerning the election of commissioners to fill vacancies on the commission and concerning the recall of commissioners.

(2) The petition may also provide for the board of commissioners to be enlarged from three (3) members to five (5) members. If the petition requests a board of commissioners composed of five (5) members, then two (2) additional commissioners shall be elected in the same manner as provided for filling vacancies under § 14-92-209(b).

(3) Commissioners serving at the time the petition is filed shall continue to serve.

(4) The petition shall be filed with the circuit court of the judicial district in which most of the district is located.

**History.** Acts 1981, No. 510, § 9; A.S.A. 1947, § 20-744; Acts 1993, No. 782, § 1.

**Publisher's Notes.** Acts 1981, No. 510 is codified as §§ 14-92-201, 14-92-202, 14-92-204 — 14-92-209, 14-92-218, 14-92-221, 14-92-226, and 14-92-237.

**Amendments.** The 1993 amendment substituted "that" for "this" in present (a); and added (b).

### CASE NOTES

**Cited:** Adams v. Highway 10 Water Pipe Line Imp. Dist. No. 4, 217 Ark. 473, 230 S.W.2d 956 (1950); Reeme v. Natural Gas Imp. Dist. No. 2, 247 Ark. 983, 448 S.W.2d 647 (1970); Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

### 14-92-203. Penalty.

(a) It shall not be lawful for the board of commissioners of any suburban improvement district or any officer, member, or agent thereof to appropriate or use any money arising from the sale of any bonds authorized to be issued under this subchapter to any use or purpose whatever other than is specified and expressly directed.

(b) And any officer, member, or agent of the board of a district who shall violate any of the provisions of this subchapter as prescribed in this section shall be deemed guilty of a felony and, upon conviction shall be punished by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years.

**History.** Acts 1941, No. 41, § 20; 1967, No. 286, § 6; A.S.A. 1947, § 20-720.

### CASE NOTES

#### **Payment by State.**

Although the state under former statute would pay all the outstanding bonds of a road improvement district, the state was not entitled to any part of the funds of the district where it had not taken over the roads of the district for maintenance.

State ex rel. Holt v. Little Rock-Highland Paving Dist., 199 Ark. 430, 133 S.W.2d 878 (1939) (decision under prior law).

**Cited:** Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

#### **14-92-204. Hearing prior to filing petition to form district.**

(a)(1)(A) Prior to filing the petition for formation of a district, each owner of realty within the boundaries of the proposed district shall be notified by certified letter of the intent of formation of the proposed district.

(B) The notice shall be accompanied by:

- (i) A copy of the petition;
- (ii) A list of those candidates nominated for commissioner;
- (iii) Proxy materials for the use of those owners not able to attend the public meeting; and
- (iv) The name and mailing address of the senior justice of the peace within the area encompassed by the proposed district.

(2) The notice shall indicate the date and location of a public meeting to be held not less than fifteen (15) days nor more than thirty (30) days prior to filing the petitions with the court.

(3) The letters of notification shall be mailed not less than fifteen (15) days nor more than thirty (30) days prior to the public hearing.

(4)(A) The notice shall also be published in a newspaper having general circulation within the counties where the proposed district is located.

(B) The publication shall be once a week for two (2) weeks prior to the public meeting, and the notice shall indicate the date and location of the public hearing.

(b)(1) The public hearing shall be held within the boundaries of the proposed district, unless public meeting facilities of sufficient size are not available, in which instance the meeting shall be held in the nearest public facility of sufficient size.

(2) The public hearing shall be chaired by the senior justice of the peace within the area encompassed by the proposed district or his appointee.

(3) The public hearing shall commence between the hours of 6:00 p.m. and 9:00 p.m.

(4)(A) The purpose of the hearing shall be:

- (i) To inform the affected owners of realty of the type of the proposed district, the preliminary cost estimates and basis thereof, and general information; and

(ii) The election, by those realty owners in attendance, in person or by proxy given to the senior justice of the peace within the area encompassed by the proposed district, by simple plurality vote with the number of votes for each candidate reported, of seven (7) commissioners, whose names shall be transmitted to the court with the petitions.

(5)(A)(i) Each commissioner shall be nominated and elected by position;

(ii) Any owner of realty within the proposed district may nominate candidates for commissioner at any time before or during the public meeting;

(B) Each commissioner shall own realty within the boundaries of the proposed district.

(6) The petitions shall not contain the names of proposed commissioners.

(7) On all questions submitted to the realty owners of a district or proposed district, each owner of realty therein shall be entitled to cast one (1) vote.

**History.** Acts 1941, No. 41, § 1; 1981, No. 510, § 1; A.S.A. 1947, § 20-701.

#### CASE NOTES

**Cited:** Adams v. Highway 10 Water Gas Imp. Dist. No. 2, 247 Ark. 983, 448 Pipe Line Imp. Dist. No. 4, 217 Ark. 473, S.W.2d 647 (1970). 230 S.W.2d 956 (1950); Reeme v. Natural

#### 14-92-205. Petition to form district.

(a) Upon the petition of a majority of the number of realty owners within a proposed suburban improvement district, the owners of a majority of the realty in the area of the proposed district and the owners of a majority of the assessed value of the realty within the proposed district, the greater portion of which realty does not lie within the boundaries of a municipality, meaning a city of the first class, city of the second class, or an incorporated town, it shall be the duty of the county court to lay off into a district the territory described in the petition, for the purpose of purchasing, accepting as a gift, constructing, or maintaining waterworks or waterpipes, recreational facilities, systems of gas pipelines, sewers or grading, draining, paving, curbing and guttering streets and highways and laying sidewalks, and establishing, equipping, and maintaining rural fire departments, or for more than one (1) of these purposes and to name as commissioners of the district the seven (7) persons whose names have been transmitted with the petitions as having been elected at a public hearing held prior to the filing of the petitions.

(b) All, or any portion, of any municipality may be included in these districts, if the portion of the area located within the municipalities shall be less than fifty percent (50%) of the area of the entire district.



However, no portion of a municipality shall be included in the district unless it shall be found that a majority of the number of owners of realty within the municipality, the owners of a majority of the realty in area within the municipality, and the owners of a majority of the assessed value of the realty within the municipality have petitioned for the formation of the district.

(c) All districts shall be numbered consecutively or else shall receive names selected by the court.

(d) If the court does not act promptly in complying with the terms of this section, or of any other section of this subchapter essential to the creation and operation of the districts, it may be compelled to do so by mandamus.

(e)(1) If land in more than one (1) county is embraced in the proposed district, the petition shall be addressed to the circuit court in which the largest portion of the land lies, and all proceedings shall be had in that circuit court.

(2) All notices in that event shall be published in newspapers published and having a bona fide circulation in each county in which the district embraces land.

(f) Any number of identical petitions may be circulated, and identical petitions with additional names may be filed at any time until the court acts.

**History.** Acts 1941, No. 41, §§ 1, 2; 1971, No. 263, § 1; 1981, No. 510, §§ 1, 2; 1953, No. 420, § 1; 1959, No. 170, § 1; A.S.A. 1947, §§ 20-701, 20-702. 1967, No. 286, § 1; 1969, No. 230, § 1;

CASE NOTES

ANALYSIS

Applicability.  
Majority of owners.  
Majority in area.  
Majority of assessed value.  
Signatures.

**Applicability.**

This section is prospective in its applicability. *Murphy v. Cook*, 202 Ark. 1069, 155 S.W.2d 330 (1941).

**Majority of Owners.**

Petition of the majority required by this section is a jurisdictional fact which must be shown before district can be established. *Johnson v. Norsworthy*, 239 Ark. 545, 390 S.W.2d 439 (1965).

**Majority in Area.**

Signature of corporate officers in their individual capacities and not on behalf of the corporations did not permit inclusion of corporate lands in determining whether there was a majority in area of property

owners and such defect could not be cured by subsequent ratification or substitution. *Johnson v. Norsworthy*, 239 Ark. 545, 390 S.W.2d 439 (1965).

**Majority of Assessed Value.**

Where assessor permitted owner of real estate addition to fix the value of lots in the addition, and he fixed such value far in excess of their actual value, such assessment could not have been used in determining whether a majority in value of the property owners had signed the petition. *Fisher v. Texarkana Forest Park Paving Dist.*, 181 Ark. 450, 26 S.W.2d 111 (1930) (decision under prior law).

**Signatures.**

Where person had signed petition for creation of district and petition had been filed, he could not withdraw his name without leave of court. *Reed v. Paving Dist. No. 2*, 171 Ark. 710, 286 S.W. 829 (1926) (decision under prior law).

**Cited:** *Adams v. Highway 10 Water*

Pipe Line Imp. Dist. No. 4, 217 Ark. 473, 230 S.W.2d 956 (1950); Reeme v. Natural Gas Imp. Dist. No. 2, 247 Ark. 983, 448 S.W.2d 647 (1970); Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**14-92-206. Hearing on petition and determination.**

(a)(1) Upon the filing of a petition as prescribed in § 14-92-205, it shall be the duty of the county clerk to give notice of the filing of it, describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the suburban improvement district to appear before the county court on a day to be fixed in the notice.

(2)(A) The notice shall be published once a week for two (2) weeks in some newspaper published and having a bona fide circulation in the county where the lands affected are situated.

(B) This notice may be in the following form:

“Notice is hereby given that a petition has been filed praying for the formation of an improvement district for the purpose of ..... Said petition is on file at the office of the County Clerk of ..... County, where it is open for inspection. All persons desiring to be heard on the question of the formation of said district will be heard by the County Court on the ..... day of ....., 19 ..... The following lands are affected: (Here give description of lands affected; same may be described by using the largest subdivision possible.)

.....  
County Clerk”

(b)(1)(A) On the day named in the notice, it shall be the duty of the court to meet and to hear the petition and to ascertain whether those signing it constitute a majority of the number of owners of realty in the proposed district, the owners of a majority of the realty in area of the proposed district, and the owners of a majority of the assessed value of realty in the proposed district.

(B)(i) If the court determines that the majority have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appoint the commissioners elected at the public hearing held prior to filing the petition.

(ii) If the court finds that a majority have not signed the petition, it shall enter its order denying the district.

(2)(A)(i) If any part of the proposed district shall be located within the corporate limits of an incorporated town or city, the court shall make a separate finding on the question of whether a majority of the number of realty owners in the incorporated area, the owners of a majority of the realty in area in the incorporated area, and the owners of a majority of the assessed value of realty in the incorporated area have signed the petition.

(ii) The court shall also make a separate finding on the question of whether a majority of the number of realty owners within the unincorporated area of the proposed district, the owners of a majority

of realty in area in the unincorporated area of the proposed district, and the owners of a majority of assessed value of realty within the unincorporated area of the proposed district have signed the petition.

(B)(i) If the court determines that the majority have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appoint the commissioners elected at the public hearing held prior to the filing of the petition.

(ii) If the court finds that a majority have not signed the petition, it shall enter its order denying the district.

(c)(1) Any petitioner or any opponent of the petition may appeal from the judgment of the court creating or refusing to create the district. However, the appeal must be taken and perfected within thirty (30) days.

(2) If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

(d)(1) The petition shall state the specific purpose for which the district is to be formed, and the judgment establishing the district shall give it a name, which shall be descriptive of the purpose.

(2) The district shall also receive a number to prevent its being confused with other districts formed for similar purposes.

**History.** Acts 1941, No. 41, § 2; 1981, No. 510, § 2; A.S.A. 1947, § 20-702.

tion of improvement districts, § 14-86-301 et seq.

**Cross References.** Notice on forma-

## CASE NOTES

### ANALYSIS

Constitutionality.

Appeals.

Approval by court.

Notice.

—In general.

—Description of lands.

—Time requirement.

### Constitutionality.

The equal protection clause does not require that questions involving the creation, organization, and management of improvement districts be submitted to popular vote. *Clem v. Cooper Communities, Inc.*, 344 F. Supp. 579 (E.D. Ark. 1972).

### Appeals.

Judgment of circuit court on appeal from judgment of county court establishing road district was not defective because it stated that the order of the county court "should be affirmed" where the recitals of the judgment had shown that the circuit court heard the case de novo and found that the district was validly organized.

*Reed v. Paving Dist. No. 2*, 171 Ark. 710, 286 S.W. 829 (1926) (decision under prior law).

Persons objecting to regularity of organization of district should have appealed to Supreme Court from judgment of circuit court, and could not bring an action in the chancery court attacking the organization of the district. *Moffett v. Texarkana Forest Park Paving, Sewer & Water Dist.*, 181 Ark. 474, 26 S.W.2d 589 (1930) (decision under prior law).

The question of the validity of a suburban water improvement district could not have been raised over 30 days after the county court order creating the district even though suit attacking correctness of assessment had been filed before 30 days. *Mowrey v. Coleman*, 224 Ark. 979, 277 S.W.2d 481 (1955).

On appeal it is the duty of the circuit court to approve the order of the county court unless it is shown by the testimony that the county court order is in error, and the burden is on the appellants to make such showing. *Bellott v. Weatherly*, 229 Ark. 741, 318 S.W.2d 152 (1958).



Where an order forming a suburban improvement district was contested, the provisions of this section requiring that an appeal from such order be taken and perfected applies rather than the six month period allowed by § 16-67-201, since this section is specific legislation relating to suburban improvement districts; however, the question of timely perfection of such appeal, since it is not specified by this section, is controlled by the general statute, § 16-67-201, which requires that the aggrieved party file an affidavit and prayer for appeal with the clerk of the court in which the appeal is taken. *Moore v. Mears*, 273 Ark. 411, 619 S.W.2d 662 (1981).

#### **Approval by Court.**

An order of a county court creating a district constituted an establishment, by the county court, of a highway in accordance with the route outlined in the petition. *Newton v. Althemer*, 170 Ark. 366, 280 S.W. 641 (1926) (decision under prior law).

The owners of the majority of the real estate in an area selected by them may not form an improvement district at will, but the proposed purposes for such a district must be submitted to and approved by the county or circuit court. *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1*, 248 Ark. 1055, 455 S.W.2d 93 (1970).

The electoral process does not play any part in the formation, governance, or operation of an improvement district under this section. *Clem v. Cooper Communities, Inc.*, 344 F. Supp. 579 (E.D. Ark. 1972).

#### **Notice.**

##### **—In General.**

The publication of notice is for advising people having property within the district of the date of hearing on the petition for the formation of the district in order that such property owners may attend and

protect their rights, and the publication of the notice is jurisdictional. *Loetscher v. Baseline Sewer Imp. Dist.*, 235 Ark. 636, 361 S.W.2d 257 (1962).

##### **—Description of Lands.**

Where all land included in district was accurately described in notice, the fact that a further description which listed the lots by number failed to include one lot would not invalidate the notice. *Castle v. Sanders*, 160 Ark. 391, 254 S.W. 674 (1923) (decision under prior law).

Irregularity of boundary lines did not invalidate district, there being no evidence to show an arbitrary or colorable inclusion or exclusion of land. *Page v. Highway No. 10, Water Pipe Line Imp. Dist.*, 201 Ark. 512, 145 S.W.2d 344 (1940) (decision under prior law).

##### **—Time Requirement.**

Where the first notice was published on Jan. 5, 1961, of a public hearing on a petition for the formation of a suburban sewer improvement district on Jan. 19, 1961, and the second notice was on Jan. 13, 1961, one of the days within the second week, the statutory notice was found to have been published for the full time required by this section, and the publication on the 13th of January of the second notice falls within this section, nothing appearing in the statute that connotes an intention by the legislature that any specific time was to be observed within the second week. *Loetscher v. Baseline Sewer Imp. Dist.*, 235 Ark. 636, 361 S.W.2d 257 (1962).

A property owner is assured of two weeks notice of hearing on petition for the formation of a suburban sewer improvement district in that publication for "two weeks" requires an interval of 14 days between the first publication and the events stated in the notice. *Loetscher v. Baseline Sewer Imp. Dist.*, 235 Ark. 636, 361 S.W.2d 257 (1962).

### **14-92-207. Board of commissioners generally.**

(a)(1)(A) Within thirty (30) days after their appointment, the members of a board of commissioners shall take and file with the county clerk their oath of office, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully their duties as commissioners in the manner provided by law.

(B)(i) Any commissioner failing to file his oath within this period shall be deemed to have declined the office.

(ii) In such instance, the county court shall call a public hearing in the same manner prescribed in § 14-92-204 for the purpose of electing a successor to fill the vacancy under the same procedures described in § 14-92-204.

(b)(1)(A) The board of commissioners shall organize by electing one (1) of its members chairman, and it shall select a secretary.

(B) The board may also employ such agents, employees, engineers, and attorneys as it deems best and fix their compensation and the compensation of the secretary.

(2) The board shall also select some solvent bank or trust company as the depository of its funds, exacting of the depository a bond in an amount equal to the amount of money likely to come into its hands.

(c) No member of the board shall be liable for any damages unless it shall be made to appear that he had acted with a corrupt and malicious intent.

**History.** Acts 1941, No. 41, §§ 3, 17; 360, § 2; 1981, No. 510, § 3; A.S.A. 1947, 1970 (Ex. Sess.), No. 16, § 1; 1971, No. §§ 20-703, 20-717.

#### CASE NOTES

##### **Constitutionality.**

Fact that commissioners may have continued in office after road was completed did not render former statute unconstitutional. *Morehart v. Mabelvale Rd. Imp. Dist.*, 178 Ark. 219, 10 S.W.2d 856 (1928)

(decision under prior law).

**Cited:** *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist.* No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

#### **14-92-208. Interest of commissioners in purchase, acquisition, or donation.**

(a) No commissioners, nor the board of commissioners of a suburban improvement district, shall be financially interested, directly or indirectly, in any firm, corporation, or association from which any property, services, materials, or facilities are purchased, acquired, or received by donation for the district, unless it is first submitted to, and approved by, the court having original jurisdiction under which the district was organized; nor shall any commissioners, or the board, enter into any contract with, or accept a donation of property or facilities from, any person with whom they are, directly or indirectly, engaged in business, without court approval as prescribed.

(b)(1) The court may not act upon such matters until after twenty (20) days from the date of first publication of the notice.

(2)(A) The clerk of the court shall give notice of the hearing by publication once each week for two (2) successive weeks.

(B) The notice shall be commenced the week following the date upon which application is made to the court.

(c) In the event any prohibited transaction shall occur or shall have occurred without court approval as prescribed, then, by action commenced in the circuit court in the county in which the larger portion of land within the district is located, any property owner within the district shall have the right, within one (1) year from the date thereof, to require that the purchase, acquisition, or donation be rescinded. Each commissioner participating in the action shall be subject to removal from office as provided in this subchapter.

**History.** Acts 1941, No. 41, § 3; 1970 § 2; 1981, No. 510, § 3; A.S.A. 1947, § 20- (1st Ex. Sess.), No. 16, § 1; 1971, No. 360, 703.

### CASE NOTES

#### **Conflict Not Found.**

The fact that persons appointed as commissioners were officers and stockholders of a company owning more than 50% of the land included in the proposed district and organized for the purpose of the development and sale of lands with various

improvements did not disqualify them for such appointment in the absence of evidence that they have acted in violation of the statutory provisions. *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1*, 248 Ark. 1055, 455 S.W.2d 93 (1970).

### **14-92-209. Removal of commissioners — Vacancies.**

(a) Commissioners of suburban improvement districts established pursuant to this subchapter may be removed from office as follows:

(1) The owners of realty within the district may petition the county court to call a public hearing for the purpose of the removal of the commissioners named in the petition and the election of successors.

(2) Upon determining that at least twenty-five percent (25%) of the number of owners of realty within the proposed district have signed the recall petition, the court shall call a public hearing on the matter and shall notify the owners of realty within the proposed district in the manner prescribed by § 14-92-204.

(3) Upon the affirmative vote of a majority, but not less than twenty-five percent (25%) of all votes entitled to be cast, of all votes cast by owners in attendance, in person or by proxy, at the public meeting as recorded through the number voting "yea" and the number voting "nay," the commissioners named in the recall petitions may be removed.

(4) The court shall at the meeting declare the commissioners removed and accept nominations for successor commissioners.

(5) The successor commissioners shall be nominated by a realty owner in attendance, in person or by proxy, at the public hearing. The nominees shall meet the qualifications required of the commissioners originally elected.

(6) Successor commissioners shall be elected from among those so nominated, at a subsequent public meeting called and held by the court in accordance with the provisions of § 14-92-204.

(b) Successor commissioners to fill vacancies on the board of commissioners due to any other reason than proceedings under subsection (a) of this section shall be nominated at a public hearing called by the



county court within thirty (30) days of notification of the vacancy. They shall be elected at a subsequent public hearing in the same manner as provided in subsection (a) of this section.

(c) The provisions of subsection (a) of this section shall apply to districts in existence on March 16, 1981. A vacancy created by the recall of a commissioner shall be filled in the same manner as provided in subsection (a) of this section. All other vacancies on the board of commissioners of a district in existence on March 16, 1981, shall continue to be filled in the same manner as provided by law prior to March 16, 1981.

**History.** Acts 1981, No. 510, § 8; A.S.A. 1947, § 20-743; Acts 1993, No. 492, § 1. **Amendments.** The 1993 amendment added (c).

### **14-92-210. Powers of board generally.**

In addition to, and not by way of limitation of the powers prescribed in § 14-92-220, the board of commissioners of a suburban improvement district shall have the powers to:

(1) Make and execute all contracts, leases, conveyances, and other instruments of the district;

(2) Join with any other political subdivision, municipality, district, or governmental agency, either state or federal, in the acquisition, construction, maintenance, operation, and financing of any of the facilities, works, or operations authorized by this subchapter or as to the performance of any of its functions;

(3) Establish rules and regulations for the transaction of the district's business and for the services, use, and right to use of its facilities or services, or both, or to effectuate any purpose of this subchapter;

(4) Do all things incidental or auxiliary to the exercise of the express powers granted by this subchapter; and

(5) Perform all actions useful to carry out the purposes of this subchapter, unlimited by any express provision of it.

**History.** Acts 1941, No. 41, § 3; 1941, No. 360, § 1; 1971, No. 360, § 2; 1981, No. 41, § 4a, as added by Acts 1971, No. 510, § 3; A.S.A. 1947, § 20-704.1.

### **14-92-211. Bond of contractors.**

(a) All contractors shall be required to give bond for the faithful performance of the contracts as may be awarded them, with good and sufficient sureties, in an amount to be fixed by the board of commissioners of a suburban improvement district.

(b) The board shall not remit or excuse the penalty or forfeiture of the bond or the breaches of it.

**History.** Acts 1941, No. 41, § 14; A.S.A. 1947, § 20-714.

**Cross References.** Bond of public contractor, § 22-9-401 et seq.

**14-92-212. Payments generally — Warrants.**

(a) The depository shall pay out no money save upon the order of the board of commissioners and upon a warrant signed by the person designated by the commissioners.

(b) Every warrant shall state upon its face to whom, the amount, and the purpose for which it is issued.

(c) All warrants shall be dated and shall be numbered consecutively, in a record to be kept by the board of the number and amount of each. No warrant shall be paid unless there are in the treasury funds enough to pay all outstanding warrants bearing a lower number.

(d) No warrants shall be increased by reason of any depreciation in the market value thereof, nor shall any contract or warrant be made payable or paid in anything but currency.

**History.** Acts 1941, No. 41, § 13; 1983, No. 524, § 1; A.S.A. 1947, § 20-713.

**14-92-213. Payments to contractor.**

(a) It shall be the duty of the board of commissioners of a suburban improvement district to have the amount of work done by any contractor estimated, from time to time, as may be desirable, by the engineer selected by the board.

(b) The board shall draw its warrants in favor of the contractor for not more than ninety percent (90%) of the amount of work so reported, reserving the remainder until it has been ascertained that the work is completed according to contract and is free from liens.

**History.** Acts 1941, No. 41, § 15; A.S.A. 1947, § 20-715.

**CASE NOTES****Refusal to Pay.**

Where district received benefits of contract to construct road, it could not refuse to pay therefor even though contract was

illegal. *Morehart v. Mabelvale Rd. Imp. Dist.*, 183 Ark. 411, 36 S.W.2d 68 (1931) (decision under prior law).

**14-92-214. Legal services in organizing.**

The board of commissioners of a suburban improvement district shall pay a reasonable fee for legal services in organizing the district and for circulating petitions.

**History.** Acts 1941, No. 41, § 14; A.S.A. 1947, § 20-714.

**14-92-215. Sale of unnecessary materials.**

The board of commissioners of a suburban improvement district may sell all unnecessary materials and implements that may be on hand and which may not be necessary for the completion of the improvement under way or which may have been completed.

**History.** Acts 1941, No. 41, § 14; A.S.A. 1947, § 20-714.

**14-92-216. Planning by board.**

(a)(1) Immediately after their qualification, the board of commissioners of a suburban improvement district shall consider the offer of any gift of improvements or facilities which has been tendered to the district, if there has been such an offer, and shall carefully examine the conditions as to the acceptance of the gift.

(2) The board may employ such engineers, attorneys, or other assistants as they find necessary and shall file a copy of all reports as well as the copy of the offer of gift with conditions incidental thereto and a written copy of the action of the commission relative to the acceptance or the rejection of the offer of gift with the county clerk.

(b)(1) Likewise, in the event the district has been organized for the purpose of purchasing an improvement or facility or for the purpose of constructing an improvement or facility, the board shall form plans relative to the purchase or the construction of the improvement.

(2) To that end the board may also employ such engineers, attorneys, and other assistants as they may find necessary and shall file copies of all pertinent reports and actions by the commissioners with the county clerk.

**History.** Acts 1941, No. 41, § 5; 1951, No. 115, § 1; 1967, No. 286, § 3; A.S.A. 1947, § 20-705.

**CASE NOTES**

**Cited:** Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**14-92-217. Change of plans.**

(a) The board of commissioners of a suburban improvement district may, at any time, alter the plans and specifications.

(b)(1) The changed plans, with the accompanying specifications, shall be filed with the county court.

(2) Notice of the filing shall be given by publication for two (2) weeks in some newspaper issued and having a bona fide circulation in the county.



(c)(1) If by reason of the change of plans the board deems that the assessment of benefits has become inequitable, it shall direct the assessor to make a reassessment.

(2)(A) If any property owner deems that, by reason of the change of plans, his assessment has become inequitable, he may, within two (2) weeks after the last publication of the notice, petition the board to order a reassessment.

(B) The decision of the board upon the property owner's petition shall be final, unless an appeal is taken within ten (10) days to the county court.

(d) In case of reassessment, the reassessment shall be filed, advertised, and equalized as provided for in the original assessment.

**History.** Acts 1941, No. 41, § 23;  
A.S.A. 1947, § 20-723.

### CASE NOTES

#### ANALYSIS

Changes allowed.

Changes not allowed.

#### Changes Allowed.

This section permits only immaterial changes and not material changes in plans. *Adams v. Highway 10 Water Pipe Line Imp. Dist. No. 4*, 217 Ark. 473, 230 S.W.2d 956 (1950).

#### Changes Not Allowed.

Where a water pipeline improvement district changed plans to shorten the pipeline one mile thereby leaving out of the improvement a school district, this would be a material change which would be in violation of this section. *Adams v. Highway 10 Water Pipe Line Imp. Dist. No. 4*, 217 Ark. 473, 230 S.W.2d 956 (1950).

### 14-92-218. Petition by property owners to extend improvements.

(a) In addition to the changes which may be made in the manner provided in § 14-92-217, real property owners sufficient to cause a district to be formed may petition the board of commissioners of a suburban improvement district to apply to the county court that the district be authorized to extend any of its empowered improvements into an area in the district for which existing authority does not appear and to assess the cost thereof on benefited property. However, the signatures in the petition shall represent at least sixty-six percent (66%) of the number of owners of realty in the proposed area, the owners of at least sixty-six percent (66%) of the realty in area in the proposed area, and the owners of at least sixty-six percent (66%) of the assessed value of realty in the proposed area as shown in the latest general tax roll.

(b) The court shall take proceedings for granting such authority in like manner and with like effect as provided in §§ 14-92-205 and 14-92-206, with appropriate changes therefor.

(c)(1) The costs of the proposed additional improvements shall be assessed upon the real property benefited thereby, in the manner and

with like effect provided in § 14-92-225 et seq., for an original improvement.

(2) When an existing assessment on any parcel or tract of land is proposed to be enlarged by reason of the changed authority, a reassessment of the parcels so affected shall be had in the manner and with like effect provided in § 14-92-227.

(d)(1) Copies of each notice of hearing before the court or the board required in any proceeding authorized in this section shall be sent by certified mail at least fifteen (15) days and not more than thirty (30) days prior to the hearing, to each owner of real property affected by the proceeding as his name and address appear in the latest county assessment records.

(2) Similar notice may be given for any other hearing authorized under this chapter.

**History.** Acts 1941, No. 41, § 24, as added by Acts 1971, No. 360, § 4; 1981, No. 510, §§ 6, 7; A.S.A. 1947, § 20-724.

CASE NOTES

ANALYSIS

1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

In general.  
Multi-purpose districts.

**In General.**

The purposes for which an improvement district may be organized are succinctly set out in this section. Cherokee Village Homeowners Protective Ass’n v. Cherokee Village Rd. & St. Imp. Dist. No.

**Multi-Purpose Districts.**

One district may be created for the purpose of laying a system of water pipes, for the purpose of laying a system of gas pipes, and for the purpose of building a system of electric lines. McCoy v. Holman, 173 Ark. 592, 292 S.W. 999 (1927) (decision under prior law).

**14-92-219. Purposes for which district organized.**

A suburban improvement district may be organized for any one (1) or more of the following purposes:

(1) To purchase, accept as a gift, or construct a waterworks system or betterments, improvements, and extensions to such waterworks system, either within or without the boundaries of the district, if the property of the district will be benefited thereby, and to operate and maintain any such waterworks system it may purchase, construct, or own;

(2) To purchase, accept as a gift, or construct, either within or without the boundaries of the district, if the property of the district will be benefited thereby, a sewage collection system or a sewage treatment plant, or intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection or treatment, purification, and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil, and industrial waste of the area within the boundaries of the

district, or adjacent thereto, and to operate and maintain any such sewage system and facilities;

(3) To open, grade, drain, pave, curb, gutter, or otherwise improve streets, roads, highways, and every other way for passage and use of vehicles, including viaducts and underpasses, either within or without the boundaries of the district, if the property of the district will be benefited thereby. Such purpose shall include the acquisition of rights-of-way by purchase or the exercise of the power of eminent domain, and to maintain such streets, roads, highways, and every other way for passage and use by vehicles, lying within the boundaries of the district or beyond the boundaries of the district, if the property of the district will be benefited thereby;

(4) To build, purchase, or accept as a gift recreational facilities such as, but not limited to, parks, lakes, golf courses, playgrounds, club-houses, stadiums, auditoriums, arts and crafts centers, folklore centers, interpretative centers, camping areas, green belt areas, and any other facilities to provide for the recreation and cultural needs of the owners of the lands within the district and also to care for, maintain, and operate any such recreational facilities;

(5) To lay and maintain sidewalks;

(6) To lay, own, extend, operate and maintain gas pipelines connecting with gas systems; provided:

(A) Nothing in this subchapter shall be construed to allow the purchase of an existing natural gas system or any part thereof, and

(B) Any such gas system shall be subject to the jurisdiction of the Pipeline Safety Division of the Arkansas Public Service Commission and shall be subject to all provisions of the Arkansas Gas Pipeline Code;

(7) To build telephone lines to connect with the telephone systems operating in nearby or adjacent municipalities;

(8) To establish, equip, and maintain rural fire departments, including construction of fire department buildings, purchase of fire trucks, fire boats, and other firefighting equipment;

(9) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate hospitals or to acquire appropriate vehicles and equipment for, maintain, and operate ambulance services; and

(10) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate libraries.

**History.** Acts 1941, No. 41, § 4; 1953, No. 420, § 2; 1967, No. 286, § 2; 1969, No. 230, § 2; 1975 (Extended Sess. 1976), No. 1213, § 1; A.S.A. 1947, § 20-704; reen. Acts 1987, No. 1008, § 1; 1997, No. 1134, § 1.

**A.C.R.C. Notes.** Part of this section was reenacted by Acts 1987, No. 1008, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not

repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

**Amendments.** The 1997 amendment rewrote (6).



**14-92-220. Powers of districts generally.**

(a) Any district, in aid to and furtherance of the purposes prescribed in § 14-92-219, shall have the authority to hire managers and other employees and to pay their salaries incident to the operation and maintenance of any of the improvements and facilities authorized in this subchapter. The district shall also have the authority to acquire and purchase equipment and machinery incident to the operation and maintenance of the facilities and shall be further authorized to do any and all other actions which shall be deemed necessary in order to purchase, construct, accept as a gift, operate, and maintain any and all improvements and facilities authorized in this subchapter.

(b) Any district shall have the power to sell or lease any improvement owned by it to any adjacent or nearby municipality, to an improvement district therein, to public service corporations serving on behalf of the property owners of the district, or to any other corporation, organization, or person. It may make contracts with the inhabitants of nearby municipalities, or it may operate such improvements for water, gas, recreation, or telephone service and may connect sewers with the sewers of any adjacent municipality or of other districts, or carry its sewers to any proper outlet within or without the district.

(c) Any district may accept as a gift any or all of the improvements and facilities authorized in this subchapter upon the assumption of the maintenance and operation of such improvements and facilities. It shall have the authority to effect the assessment of benefits and to levy the necessary tax against such assessment of benefits, as prescribed in this subchapter in order to provide the revenue for the costs of maintenance and operation.

**History.** Acts 1941, No. 41, § 4; 1953, No. 420, § 2; 1967, No. 286, § 2; 1969, No. 230, § 2; A.S.A. 1947, § 20-704.

**CASE NOTES****ANALYSIS**

Constitutionality.  
In general.

**Constitutionality.**

The powers conferred on improvement districts do not constitute an unconstitutional delegation of legislative authority. *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp.*

Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**In General.**

The powers that an improvement district may exercise are succinctly set out in this section. *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1*, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**14-92-221. Corporate powers.**

Each suburban improvement district shall be a body corporate with power to sue and to be sued, and it shall have a corporate seal.

**History.** Acts 1941, No. 41, § 3; 1970 § 2; 1981, No. 510, § 3; A.S.A. 1947, § 20- (Ex. Sess.), No. 16, § 1; 1971, No. 360, 703.

**14-92-222. Right and power of eminent domain.**

(a)(1) All improvement districts organized under this subchapter shall have the right of eminent domain in order that they may carry out the purposes of their creation.

(2) This right shall be exercised in the same manner as in the case of railroads, telegraph, and telephone companies but without the necessity of making a deposit of money before entering into possession of the property condemned.

(b)(1) Any district shall have the power of eminent domain for the purposes of:

(A) Condemning any water or sewer utility found within the boundaries of the district which is exempt from the definition of "public utility" as found in § 23-1-101(4);

(B) Securing any lands or rights-of-way needed in making improvements to water or sewer systems owned and operated by that district.

(2)(A) The board of the district shall have the power to enter upon any private property for the purposes stated in subdivision (b)(1) of this section. If the person is damaged and the board cannot agree on the sum to be paid for the damages, the person aggrieved may file his petition in the circuit court of the county setting forth his grievance and asking compensation therefor, making the board a party defendant. The issues in the suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties. The case shall be advanced on the docket so as to have precedence over all other causes. The judge of the circuit court may hold a special term at any time for the trial of the cause, giving ten (10) days' notice to the parties of the time of holding the special term. The notice may be in writing and shall be served on the parties as a writ of summons is directed to be served unless the notice is waived by the parties, or one of them.

(B) In case an agreement cannot be arrived at between the board of improvement and the owner of the property in relation to the damages claimed, the judge of the court, in vacation, may fix an amount to be deposited with some person to be designated by the court, before the entering upon and taking possession of the property to be used and taken as provided in this subsection. Upon the amount required being deposited and certificate thereof filed in the cause, the work may proceed.

**History.** Acts 1941, No. 41, § 25; A.S.A. 1947, § 20-725; Acts 1987 (1st Ex. Sess.), No. 37, § 3.

**Cross References.** Eminent domain by railroad, telegraph, and telephone companies, § 18-15-1201 et seq.

### CASE NOTES

#### Public Purposes.

The acquisition of recreational facilities and public parks as authorized by this section are for public purposes. Cherokee

Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

#### 14-92-223. Sale of land.

Any land that may be acquired by any improvement district organized under this subchapter may be sold by the board of commissioners for the price and on the terms it deems best.

**History.** Acts 1941, No. 41, § 28; A.S.A. 1947, § 20-727.

#### 14-92-224. Priority of cases.

All cases involving the validity of suburban improvement districts or the assessment of benefits and all suits to foreclose the lien for taxes shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment, and all appeals from them must be taken and perfected within thirty (30) days.

**History.** Acts 1941, No. 41, § 21; A.S.A. 1947, § 20-721.

### CASE NOTES

#### Judicial Review.

The improvement district must act for the benefit of all the affected property owners, and if any property owner feels aggrieved, he has the right to have the decision of the district judicially reviewed. Cherokee Village Homeowners Protective

Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**Cited:** Pate v. Piney Sewer Imp. Dist. No. 32, 15 Ark. App. 231, 691 S.W.2d 882 (1985).

#### 14-92-225. Assessment of benefits and damages.

(a)(1) In the event the board of commissioners of a suburban improvement district shall have voted to accept any offer of gift, shall have voted to purchase any improvement or facility, or shall have voted to construct any improvement or facility, it shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the district from the acceptance of the gift of improvement or facilities, the purchase of the improvement or facilities, or the construction of the improvement or facilities.

(2) The assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the district by reason of the acceptance, purchase, or construction of the proposed improve-



ment or facilities, sometimes referred to as "improvement." He shall thereupon proceed to assess the lands within the district.

(b)(1) The assessor shall inscribe in a book each tract of land and shall place in one column his valuation of each tract or parcel of land prior to the improvement, which may be marked "Assessed Value of Lands Prior to Improvements," and in another column he shall place what he thinks will be the value of each tract or parcel of land after the improvement, which may be marked "Assessed Value of Lands After Improvements."

(2)(A)(i) If the assessed value of land after improvements is greater than the assessed value of land before improvements, as assessed by the assessor for the district, then the difference between the two shall be the assessed benefits that will accrue to each tract by reason of the improvement.

(ii) If the assessed value of land, as assessed by the assessor of the district, after improvements are acquired or made is less than the assessed value of land before improvements are acquired or made, as assessed by the assessor for the district, then the difference between the two shall be the assessed damages that will accrue to the particular parcel or tract of land by reason of the improvement.

(B) The assessor shall enter the assessment of benefits or damages opposite the description of each piece of property in appropriate columns, one of which may be marked "Assessed Benefits" and the other may be marked "Assessed Damages," and in another column the assessor shall show the estimate of the probable cost to the landowner, which may be marked "Estimated Cost."

(c)(1) The assessment shall embrace not merely the lands, but shall embrace all railroads, tramroads, telegraph lines, telephone lines, pipelines, and other improvements on real estate that will be benefited by the acquiring or making of the improvement.

(2) No assessment shall apply against any pipelines or other improvements which are extensions of or connected to the pipeline distribution system or other improvements within any city adjacent to the district.

(d)(1) The assessor shall place opposite each tract the name of the supposed owner as indicated by the deed records, but a mistake in name shall not vitiate the assessment.

(2)(A) The assessor shall also assess all damages that will accrue to any landowner by reason of the proposed improvement including all injury to lands taken or damaged.

(B) Where the assessor returns no such damages to any tract of land, it shall be deemed a finding by him that no damages will be sustained.

(e) The assessor shall hold his office at the pleasure of the board, which can fill any vacancy in the position of assessor.

(f) In assessing benefits which shall accrue as the result of the acquisition or construction of gas pipelines, the assessor may consider the number of burner tips and the historical and estimated usage of gas with respect to each tract of land assessed.

**History.** Acts 1941, No. 41, § 5; 1951, No. 115, § 1; 1967, No. 286, § 3; A.S.A. 1947, § 20-705; Acts 1997, No. 1134, § 2.

**Amendments.** The 1997 amendment added (f).

**Cross References.** Partition of assessments among several owners of single tract, § 14-86-601.

## CASE NOTES

### ANALYSIS

Constitutionality.

Challenge of assessments.

Method of assessment.

Nature of assessments.

### Constitutionality.

Fact that assessors were given power, in making assessment of benefits, to assess damages that would accrue to any landowner by reason of proposed improvement, including all injury to lands taken or damaged, did not render former statute unconstitutional. *Morehart v. Mabelvale Rd. Imp. Dist.*, 178 Ark. 219, 10 S.W.2d 856 (1928) (decision under prior law).

### Challenge of Assessments.

Where a sewer improvement district in 1973 filed its assessment of benefits and damages pursuant to this section preparatory to condemning rights of ways for roads and sewer lines and where property owners failed to thereafter file suit in chancery court within 30 days as required by § 14-92-226, the property owners were not precluded by the 30-day limitations period from asking damages in answer to a condemnation suit filed by the district in 1975, since at the time of the 1975 hearing there was a total want of proof by the district regarding its assessment of benefits and the owners' alleged failure to file a timely challenge. *Cleveland v. Gravel Ridge San. Sewer Imp. Dist.* No. 213, 274 Ark. 330, 625 S.W.2d 446 (1981) (decision

prior to 1981 amendment of § 14-92-226).

### Method of Assessment.

Where the assessor testified that he had followed the method of assessments provided in this section and that, in determining the proper basis for assessment of value for benefits to accrue to each piece of property, he considered the value, area, location of the property, the improvements thereon, its relation to other properties, and every other element which might go to make up the sum total of benefits, and there was no evidence that he did not comply with the statutory requirements, the chancellor properly found that the assessor's method of assessment was proper. *Pate v. Piney Sewer Imp. Dist.* No. 32, 15 Ark. App. 231, 691 S.W.2d 882 (1985).

### Nature of Assessments.

A local improvement district is not a "taxing agency" as its levies are special assessments or matured assessments of benefits and interest thereon and it is not a subordinate political agency of the state, so such a district is not bound by statutory provisions for minimum prevailing wages to be paid on works of a "taxing agency." *Wood v. Henderson*, 225 Ark. 180, 280 S.W.2d 226 (1955).

**Cited:** *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist.* No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

## 14-92-226. Filing and notice of assessment.

(a)(1) The assessment shall be filed with the county clerk of the county.

(2)(A)(i) The secretary of the board of commissioners shall thereupon give notice of its filing by publication once a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county.

This notice may be in the following form:

“Notice is hereby given that the assessment of benefits and damages of ..... District Number ..... has been filed in the office of the county clerk of ..... County, and where it is open to inspection. All persons wishing to be heard on said assessment will be heard by the commissioners and the assessor of said district between the hours of 10 a.m. and 4 p.m., at ....., in City of ....., Arkansas, on the ..... day of ....., 19 .....

.....  
Secretary”

- (B)(i) The secretary shall send a copy of the notice by certified letter to each owner of realty within the boundaries of the district.
- (ii) The letters of notification shall be mailed not less than fifteen (15) days nor more than thirty (30) days prior to the date of hearing. The letter notices shall also advise each property owner of the benefits or damages assessed against all of his property located within the district.
- (b) On the day named in the notice, it shall be the duty of the commissioners and assessor to meet together at the place named as a board of equalization and to hear all complaints against the assessment and to equalize and adjust it. Their determination shall be final unless suit is brought in the chancery court to review it.

**History.** Acts 1941, No. 41, § 6; 1981, No. 510, § 4; A.S.A. 1947, § 20-706.

CASE NOTES

**Judicial Review.**

Suit in chancery court attacking assessments is prematurely brought before an attempt is made to have assessment corrected by board of equalization. *Moffett v. Texarkana Forest Park Paving, Sewer & Water Dist.*, 181 Ark. 474, 26 S.W.2d 589 (1930) (decision under prior law).  
Where a sewer improvement district in 1973 filed its assessment of benefits and damages pursuant to § 14-92-225 preparatory to condemning rights of ways for roads and sewer lines and where property owners failed to thereafter file suit in

chancery court within 30 days as required by this section, the property owners were not precluded by the 30-day limitations period from asking damages in answer to a condemnation suit filed by the district in 1975, since at the time of the 1975 hearing there was a total want of proof by the district regarding its assessment of benefits and the owners’ alleged failure to file a timely challenge. *Cleveland v. Gravel Ridge San. Sewer Imp. Dist. No. 213*, 274 Ark. 330, 625 S.W.2d 446 (1981) (decision prior to 1981 amendment).

**14-92-227. Reassessment.**

- (a) The board of commissioners may, not more often than once a year, require the assessor to reassess the benefits in a suburban improvement district. However, in the event the district shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished.



(b) The reassessment shall be made, advertised, and equalized in the same manner as provided in this subchapter for making the original assessment.

**History.** Acts 1941, No. 41, § 7; A.S.A. 1947, § 20-707.

be reduced after issuance of bonds, § 14-86-602.

**Cross References.** Assessments not to

### CASE NOTES

#### Financial Restraints.

Where district was validly organized, it could not have been restrained from issuing bonds and levying and collecting taxes; the validity of contract for construc-

tion of road would not have been involved in such case. *Morehart v. Mabelvale Rd. Imp. Dist.*, 183 Ark. 411, 36 S.W.2d 68 (1931) (decision under prior law).

### 14-92-228. Levy of tax.

(a)(1) The board of commissioners of a suburban improvement district shall, at the same time that the assessment of benefits is equalized or at any time thereafter, enter upon its records an order, which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement, with ten percent (10%) added for unforeseen contingencies.

(2) The tax is to be paid by the real property in the district in proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, not to exceed ten percent (10%) for any one (1) year, as provided in the order.

(b) The tax so levied shall be a lien upon all the real property in the district from the time it is levied and shall be entitled to preference over all demands, executions, encumbrances, or liens, whensoever created, and shall continue until the assessment, with any penalty costs that may accrue thereon, shall have been paid.

(c)(1) The remedy against the levy of taxes shall be by suit in chancery.

(2) The suit must be brought within thirty (30) days from the time of notice that the levy was made, and on the appeal, the presumption shall be in favor of the legality of the tax.

(d)(1) The commissioners shall, promptly after entry of an order levying the tax, publish once a week for two (2) consecutive weeks in some newspaper having general circulation in the district, a notice setting forth the order of levy and warning all persons affected by it that it shall become final unless suit is brought to contest it within thirty (30) days of the date of first publication of the notice.

(2) No property owner shall be barred from contest of the levy within the thirty-day publication period.

**History.** Acts 1941, No. 41, § 8; 1961, A.S.A. 1947, § 20-708; Acts 1989, No. 548, No. 154, § 1; 1970 (Ex. Sess.), No. 16, § 2; § 1.

**CASE NOTES****Judicial Review.**

The improvement district must act for the benefit of all the affected property owners, and if any property owner feels aggrieved, he has the right to have the

decision of the district judicially reviewed. Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**14-92-229. Interest on assessments.**

The assessment of the benefits shall bear interest at a rate or rates from the time it is equalized, not to exceed that required to service the bonds, or at the maximum interest rate allowed by law if no bonds issue. However, the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

**History.** Acts 1941, No. 41, § 9; 1971, No. 360, § 3; 1981, No. 474, § 1; A.S.A. 1947, § 20-709.

**14-92-230. Extension and collection of taxes.**

(a)(1) When the board of commissioners in a suburban improvement district shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set it opposite each benefit assessed in a column marked "Annual Collection."

(2)(A) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted.

(B) For his services the clerk shall receive a commission of one and one-half percent (1½%) of the amount so extended.

(b)(1)(A)(i) It shall then be the duty of the tax collector of the county to collect each year the taxes extended upon the books along with the other taxes until the entire levy is exhausted.

(ii) For his services in making the collections, the collector shall receive a commission of one and one-half percent (1½%).

(B) The taxes shall be paid over by the collector to the depository of the district at the same time he pays over the county funds.

(2) In counties operating under the unit tax ledger system, the collector shall receive a commission of one and one-half of one percent (1½% of 1%) for extending the taxes and a commission of an additional one and one-half of one percent (1½% of 1%) for collecting the taxes.

(c)(1) County clerks and tax collectors are authorized to employ additional deputies to do the increased work imposed by the terms of this subchapter.

(2) They may pay the deputies' salaries up to the sum of three thousand three hundred dollars (\$3,300) per annum. However, the salaries shall never exceed the receipts from the commissions allowed by this subchapter.

(d) A property owner shall be required to pay applicable suburban improvement taxes provided in this subchapter as a prerequisite to paying his ad valorem real property taxes.

**History.** Acts 1941, No. 41, § 10; 1951, No. 233, § 1; 1957, No. 331, § 1; A.S.A. 1947, § 20-710; Acts 1991, No. 281, § 1.

**Publisher's Notes.** Acts 1991, No. 281, § 6, provided, in part, that the 1991 amendment to (d) "shall be applicable to

suburban improvement district taxes due and payable on or before October 10, 1991."

**Cross References.** Advancement of funds to suburban improvement districts by municipalities, § 14-89-801.

### 14-92-231. Subsequent levies.

(a) If the tax first levied shall prove insufficient to pay the bonds, both the principal and interest issued by the board of commissioners on account of an improvement, as provided in this subchapter, as it shall become due and payable, they shall, from time to time, make such further levies upon the property previously assessed for sums sufficient to complete the improvement and to pay such bonds and interest, which shall be extended and collected in the same manner as the first levy. However, the total levy shall in no case exceed the value of the benefits assessed on the property with interest.

(b) The performance of such duties may be enforced by mandamus at the instance of any person or board interested.

**History.** Acts 1941, No. 41, § 11; A.S.A. 1947, § 20-711.

### 14-92-232. Payment of taxes — Enforcement.

(a) All taxes levied under the terms of this subchapter shall be payable at the same time as ad valorem real property taxes.

(b) Delinquent suburban improvement district assessments shall be held by the county collector, and, if not redeemed, the assessments shall be certified to the Commissioner of State Lands for redemption or sale, pursuant to Act 626 of 1983, as amended.

(c) A suburban improvement district may enforce collection of delinquent suburban improvement district assessments by chancery proceedings in the chancery court of the county in the manner as provided for municipal property owners' improvement districts under § 14-94-122.

**History.** Acts 1941, No. 41, § 12; 1977, No. 463, § 1; A.S.A. 1947, § 20-712; Acts 1991, No. 281, § 2; 1993, No. 782, § 2.

**Publisher's Notes.** Acts 1991, No. 281, § 6 provided, in part, that the 1991 amendment to this section "shall be applicable to suburban improvement district taxes due and payable on or before October 10, 1991".

**Amendments.** The 1993 amendment added (c).

**Meaning of "this act".** Acts 1983, No. 626, codified as §§ 26-37-101, 26-37-101 note; 26-37-102 — 26-37-105; 26-37-201 — 26-37-205; and 26-37-301 — 26-37-303.

**Cross References.** Lien of district may be enforced notwithstanding tax sale to state, § 14-86-1601 et seq.

Payment of improvement district taxes with bonds of district, § 14-86-803.



**14-92-233. Notice of delinquency.**

(a) County tax collectors shall, at least once annually, send a delinquency notification to each property owner who is delinquent in the payment of the assessed benefits levied by suburban improvement districts formed under this subchapter.

(b) The notice shall be mailed to the last known address of the delinquent property owner and shall include an identification of the property, the amount of the delinquency, and any interest or penalties thereon.

**History.** Acts 1983, No. 903, § 1;  
A.S.A. 1947, § 20-745.

**14-92-234. Notes, bonds, or evidences of debt.**

(a)(1) In order to meet preliminary expenses and to do the work, the board of commissioners may issue negotiable notes or bonds of the district signed by the members of the board and bearing such rate or rates of interest as shall be determined by the board and may pledge and mortgage all assessments of benefits of the district and all or any part of the profits of the district derived from its operation of any waterworks, sewer system, gas system, recreational facilities, or hospital to the payment of the notes and bonds.

(2) The board may also issue to the contractors who do the work negotiable evidences of debt bearing interest at the same rate or rates prescribed by the board and secure them in the same manner.

(3) With the consent of the sellers of improvements, as provided in this chapter, it may issue to the sellers negotiable notes or bonds of the district bearing interest at the rate or rates prescribed by the board covering all or a portion of the purchase price of the improvements and secure the notes or bonds in the same manner as provided in this section.

(4) As further security for the payment of any such indebtedness, the members of the board of any district organized for the construction of waterworks or water pipes, tanks, and wells, sewer systems, gas pipelines, recreational facilities, or hospitals may be resolved to establish the water or sewer rates, rates for use of gas pipelines, rates for use of recreational facilities, or rates for use of the hospitals to be collected from the users thereof. The board may mortgage any or all of its property, including the system, buildings, equipment, lands, leases, easements, and rights-of-way.

(b) No bonds issued under the terms of this subchapter shall run for more than thirty (30) years, and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments, revenues, or profits from the systems are collected, or they may all be made payable at the same time, with proper provision for a sinking fund.

(c) The bonds shall not be sold for less than par without the unanimous vote of the board.

**History.** Acts 1941, No. 41, § 16; 1967, No. 286, § 4; 1969, No. 230, § 3; 1970 (Ex. Sess.), No. 53, § 1; 1981, No. 703, § 3; A.S.A. 1947, § 20-716; Acts 1997, No. 1134, §§ 3, 4.

**Amendments.** The 1997 amendment

inserted "gas system" following "sewer system" in (a)(1); and, in (a)(4), inserted "gas pipelines" following "sewer systems" and inserted "rates for use of gas pipelines" following "water or sewer rates."

## CASE NOTES

### Bonds.

Complaint filed by property holders attacking constitutionality of refunding bonds, issued by district created under former statute, was properly dismissed for lack of equity when the complaint contained no exhibits sufficient in character to constitute proof of illegality and where only proof at the trial was that the plaintiffs were property holders. *Pruitt v. Pine Bluff Water & Sewer Extension Dist.*, 214 Ark. 64, 214 S.W.2d 489 (1948).

Where resident of water and sewer improvement district filed a class suit to

prevent sale of bonds, on the ground that certain resolutions and pledge of the board delegated authority to a trustee not authorized, the court would not presume that, if the contingencies arose, the actual procedure followed would be contrary to that authorized; hence complaint was dismissed for lack of equity. *Roscoe v. Water & Sewer Imp. Dist. No. 1*, 216 Ark. 109, 224 S.W.2d 356 (1949).

**Cited:** *Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1*, 248 Ark. 1055, 455 S.W.2d 93 (1970).

### 14-92-235. Payment of bonds.

(a)(1) All bonds issued by a board of commissioners for a suburban improvement district under the terms of this subchapter shall be secured by a lien on all real property in the district that will be benefited by the acquiring or making of the improvement financed with the proceeds of such bonds.

(2)(A) The board shall see to it that a tax is levied annually and collected under the provisions of this subchapter, so long as it may be necessary to pay any bond issued or obligation contracted under its authority.

(B) The making of said assessment or levy and collection may be enforced by mandamus.

(b)(1)(A) If any bond or interest coupon on any bond issued by the board is not paid within thirty (30) days after its maturity, it shall be the duty of any court of competent jurisdiction, on application of any holder of the bond or interest coupon so overdue, to appoint a receiver to collect the taxes and an assessor to reassess the benefits, if necessary.

(B) The proceeds of the taxes and collections shall be applied after payment of costs, first to overdue interest and then to payment pro rata of all bonds issued by the board which are then due and payable.

(2)(A) The receiver may be directed, by suit, to foreclose the lien of taxes on lands.

(B) The suits so brought by the receiver shall be conducted in all matters as suits by the board as provided in this subchapter and with like effect, and the decree and deeds therein shall have the same presumption in their favor.

(c) When all the sums have been paid, the receiver shall be discharged and the affairs of the district conducted by the board as provided in this subchapter.

**History.** Acts 1941, No. 41, § 19; A.S.A. 1947, § 20-719; Acts 1997, No. 1134, § 5.

**Cross References.** Receiver of district may redeem from state, § 14-86-1602.

**Amendments.** The 1997 amendment rewrote (a)(1).

#### **14-92-236. Public contributions to road or street improvement districts.**

(a)(1) The county court is authorized to turn over to any road or street improvement district organized under this subchapter that proportion of the road tax, as may be just and equitable, or any portion of the automobile or gasoline tax.

(2) The county court is further authorized to contribute these funds in money or scrip to the expense of the improvement from the general revenue of the county as it may deem appropriate.

(b)(1) Any such district is authorized to receive any part of the funds that may be set aside by the federal government for the improvement of public roads and any that may be set aside by the government of this state for aid in the improvement of public roads.

(2) The board of commissioners of the district and the Arkansas State Highway and Transportation Department are authorized and directed to take such action as may be necessary to secure any of these funds for these districts as an improvement of a part of the public roads of the state in which the state has an interest.

**History.** Acts 1941, No. 41, § 27; A.S.A. 1947, § 20-726.

#### **14-92-237. Dissolution or conversion of district.**

(a)(1) After all bonds, notes, or other evidences of indebtedness, plus all interest thereon, shall have been paid in full, a suburban improvement district may, by unanimous vote of the board of commissioners, be dissolved and all future levies and assessments cancelled, the board relieved from further duties, and the surplus funds of the district distributed in accordance with the procedures set forth in subsections (b) and (c) of this section, if title to and control of the facilities constructed by the district have been taken over or assumed by any political subdivision, municipal utility commission or agency, or any regulated public utility, or a suburban improvement district may, by unanimous vote of the board of commissioners, be converted into a fire protection district and all future levies and assessments cancelled, the board relieved from further duties, and any remaining funds and any other property of the district transferred to the new entity in accordance with the procedures set forth in subsection (d) of this section.



(2) The districts are authorized, at the discretion of the commissioners, to enter into repair and maintenance agreements or contracts and to expend funds of the districts for these purposes.

(b) Any improvement district created pursuant to this subchapter may be dissolved in the same manner it was created. However, if any district having outstanding bonds or other indebtedness is dissolved, the assessed benefits being levied at the time of dissolution shall continue to be levied and collected until the outstanding bonds or other indebtedness is paid.

(c)(1) In the event the commissioners vote to dissolve the district or the district is dissolved by vote of the realty owners at a public hearing, the board shall convert all assets into cash and shall first pay from such surplus funds all debts of the district, including any reasonable legal and other expenses incurred in connection with the dissolution.

(2)(A) The commissioners then shall refund all remaining funds of the district, pro rata, to the property owners who hold title to the property in the district at the time the refund is made.

(B)(i) The pro rata refund to the property owners shall be made on the basis of the most recent assessment or reassessment of benefits on the parcels of property prior to dissolution and shall be in the same proportion that the assessed benefits of each individual parcel of property bears to the total of the assessed benefits of all the property in the district.

(ii) No property or owner whose property is delinquent in any sum for district assessments, penalties, or interest, at the time the refund is made shall be counted in calculating the pro rata distribution, or receive any portion of the refund.

(C) Within ninety (90) days after the distribution of the surplus funds has been completed, the board shall file a copy of the resolution of dissolution and a financial statement of the district, verified by all commissioners, in the office of the county clerk in the county in which the district is located.

(d)(1) Any improvement district created pursuant to this subchapter solely for the purposes of providing fire protection services may be converted into a new fire protection district under § 14-284-201, et seq., and shall, after the conversion, be governed under the authority of that law. However, if a district has any outstanding bonds or other indebtedness, it shall not be converted until the outstanding bonds or other indebtedness is paid.

(2) In the event the commissioners vote to convert the district, the board shall choose a date certain of not less than sixty (60) days nor more than twelve (12) months at which time the conversion shall become effective and shall notify the county court of the county in which the district is located that the board has voted to convert the district and shall specifically define the area proposed to be included in the new fire protection district. After verifying that the commissioners have voted unanimously to convert the district to a proposed fire protection district and that there is no outstanding indebtedness for the district,

the county court shall enter an order establishing the district as described in the notice by the board and establishing the time and place of a public meeting to be held within the district to elect the new commissioners of the fire protection district as is otherwise provided by law.

(3) After paying all debts of the district, including any reasonable legal and other expenses incurred in connection with the conversion, the board shall transfer any and all remaining cash and other monetary assets and any real and personal property to the new district on the effective date of the conversion. All delinquent assessments of the district and any debts owed to the district shall become debts to the new district and shall be subject to collection by the new district in accordance with its powers and authority.

(4) Within ninety (90) days after the transfer of any and all remaining funds and property has been completed, the board shall file a copy of the resolution of conversion and a final financial statement of the district, verified by all commissioners, in the office of the county clerk in the county in which the district is located. The fire protection district shall be deemed to have been formed upon the date of its conversion from a suburban improvement district.

**History.** Acts 1941, No. 41, § 18; 1963, No. 150, § 1; 1967, No. 286, § 5; 1981, No. 510, § 5; A.S.A. 1947, § 20-718; Acts 1997, No. 323, § 1.

**A.C.R.C. Notes.** The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkan-

sas Code Revision Commission is unable to correct the punctuation.

**Amendments.** The 1997 amendment added the language beginning "or a suburban improvement district may, by unanimous vote of the board of commissioners" to the end of (a)(1); and added (d).

## CASE NOTES

### **Abolishment by Legislature.**

The legislature could not abolish an individual improvement district estab-

lished under a general law. *Raines v. Bolick*, 183 Ark. 832, 39 S.W.2d 309 (1931) (decision under prior law).

### **14-92-238. Lien for preliminary expenses.**

(a) In case, for any reason, the improvement contemplated by any suburban improvement district organized under this subchapter is not made, the preliminary expense shall be a first lien upon all the land in the district and shall be paid by a levy of a tax thereon upon the assessed value for county and state taxation.

(b) The levy shall be made by the chancery court of the county and shall be collected by a receiver to be appointed by the court.

**History.** Acts 1941, No. 41, § 22; A.S.A. 1947, § 20-722.

## CASE NOTES

## ANALYSIS

Constitutionality.  
Jurisdiction.  
Notice.  
Protests.

**Constitutionality.**

This section is not unconstitutional because it does not provide that each landowner be served with personal notice of the proceeding to determine the district's preliminary expenses, since no such notice is necessary; in a dispute between an improvement district and its creditors, the district's board of commissioners represents the district. *Harrill v. Board of Comm'rs*, 282 Ark. 348, 668 S.W.2d 538 (1984).

**Jurisdiction.**

This section is not invalid as conferring jurisdiction on the chancery court to levy a tax since the chancellor is not vested with any discretion in the levy of the tax; the chancery court has jurisdiction to determine the preliminary expense because it is a first lien on the land, a matter traditionally within the jurisdiction of a court of equity; but, once the amount of the district's debt for preliminary expenses has been determined, the computation of the tax is merely a matter of distributing

the burden over the total assessed value of the property within the district. *Harrill v. Board of Comm'rs*, 282 Ark. 348, 668 S.W.2d 538 (1984).

**Notice.**

Where landowners did not show that their position differed in any pertinent respect from that of other landowners who contested assessment of benefit and, moreover, their petition to intervene and their proposed complaint were considered at a hearing at which they were specifically given the opportunity to proffer whatever proof they may have had and they presented no evidence to show that the absence of personal notice prejudiced them in any way, they had notice and an opportunity to be heard, so personal notice to each landowner was not required. *Harrill v. Board of Comm'rs*, 282 Ark. 348, 668 S.W.2d 538 (1984).

**Protests.**

Every landowner is given the opportunity to protest when his land is assessed for general taxation; a second opportunity need not be given for them to protest valuations for suburban improvement districts pursuant to this section. *Harrill v. Board of Comm'rs*, 282 Ark. 348, 668 S.W.2d 538 (1984).

**14-92-239. Continued existence of district.**

Suburban improvement districts shall not cease to exist upon the acquiring, construction, or completion of the improvement but shall continue to exist for the purpose of preserving, maintaining, and operating the improvement, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in this subchapter. To this end, the board of commissioners may, from time to time, make such additional levies based upon the assessment of benefits as may be necessary for these purposes. However, the amount of the total levies shall not exceed the assessed benefits and interest thereon.

**History.** Acts 1941, No. 41, § 18; 1953, No. 420, § 3; 1963, No. 150, § 1; 1967, No. 286, § 5; A.S.A. 1947, § 20-718.



## CASE NOTES

## ANALYSIS

Constitutionality.  
Sale of improvements.

**Constitutionality.**

Provision that districts shall not cease to exist upon completion of the improvement, but may continue for the purpose of preserving and keeping the district in repair, is authorized under the constitu-

tion. *Murphy v. Cook*, 202 Ark. 1069, 155 S.W.2d 330 (1941).

**Sale of Improvements.**

Since improvement district could build a pipeline and then sell it, it could also contract to sell the pipeline before it was built. *Page v. Highway No. 10, Water Pipe Line Imp. Dist.*, 201 Ark. 512, 145 S.W.2d 344 (1940) (decision under prior law).

### **14-92-240. Districts of less than six thousand lots — Alteration of number of and method of selecting commissioners.**

(a) Any suburban improvement district which contains fewer than six thousand (6,000) lots and which selects successor commissioners by a vote of the remaining commissioners may alter the number and method of selection of members of the board of commissioners of the district pursuant to this section.

(b)(1) Any property owner in the suburban improvement district may make a written request for an election on the question of whether to change the method of selecting the board of commissioners of the district. The request shall be filed with a quorum court member whose district includes all or part of the suburban improvement district.

(2) The property owner filing the request shall be responsible for all costs of the election and any notice required under subsection (b) of this section.

(3)(A) Within forty-five (45) days after receiving the request, the quorum court member shall mail, by first class mail, ballots to all property owners in the district, along with a copy of this section.

(B) The date for returning ballots shall be set by the quorum court member and shall not be less than twenty (20) days after the date he or she mailed the ballots to property owners.

(C) Ballots shall not be valid unless signed by the property owner and mailed within the time allowed.

(4) Two (2) votes shall be awarded for each property. The interests of time-share owners shall be voted by the time-share owners' association on the same basis.

(5) A majority of the votes cast on the issue shall be required for passage of the measure.

(6) The quorum court member who conducted the election shall notify the property owners of the results of the election. If the measure passes, the notice shall include the notice of the meetings for nomination and election.

(7) The commissioners serving on the board at the time of the approval of the measure shall continue to serve until a new board is elected.

(c)(1)(A) Not more than sixty (60) days nor less than thirty (30) days after the measure is approved, the quorum court member who conducted the election under subsection (b) of this section shall hold a meeting to accept nominations for the new commissioners. Nominations for commissioners shall be made by property owners.

(B) The commissioners shall be elected, from among those nominated, at a subsequent public meeting to be held not less than thirty (30) days after the meeting to nominate commissioners.

(C) Notice of the meetings shall be mailed to each property owner at least thirty (30) days prior to the meeting to nominate commissioners.

(D) The notice shall include the following information:

(i) The time, place, and date of the meetings to nominate and elect a new board of commissioners;

(ii) How to request an absentee ballot; and

(iii) The qualifications for voting in the election.

(2) Each property owner in attendance at the meeting to nominate shall be entitled to nominate one (1) district resident property owner. Each property owner shall be entitled to one (1) vote for each position of commissioner to be filled. A property owner may cast his or her vote in person at the meeting conducted to elect commissioners or may vote by an absentee ballot. Absentee ballots must be received prior to the meeting held to elect commissioners. Any absentee ballot may be requested by any property owner.

(3)(A) A meeting shall be held annually to nominate successor members, and a subsequent meeting shall be held to elect successor members.

(B) The annual meetings shall be conducted by the board.

(C) The same notice requirements as for the initial meetings for nomination and election of commissioners shall apply to the annual meetings for nomination and election of commissioners.

(4) The cost of the election held to select commissioners under this subsection shall be borne by the district.

(d)(1) The new board of commissioners shall consist of five (5) members, who shall serve staggered terms of three (3) years.

(2) The terms of office of initial members shall be determined as follows:

(A) The individuals receiving the highest and second highest number of votes shall serve an initial term of three (3) years;

(B) The individuals receiving the third and fourth highest number of votes shall serve an initial term of two (2) years; and

(C) The individual receiving the fifth highest number of votes shall serve an initial term of one (1) year.

(3) If two (2) commissioners are to be elected at an annual meeting, the individuals receiving the highest and second highest number of votes shall be elected. If one (1) commissioner is to be elected at an annual meeting, the individual receiving the highest number of votes shall be elected.

(4)(A) Vacancies occurring on the board shall be filled until the next annual election by a majority vote of the remaining commissioners.

(B) At the annual election, the position shall be filled for the remainder of the unexpired term. If two (2) commissioners are to be elected at the annual meeting, the individual receiving the second highest number of votes shall fill the vacancy for the unexpired term. If three (3) commissioners are to be elected at the annual meeting, the individual receiving the third highest number of votes shall fill the vacancy for the unexpired term.

(5) Whenever any member of the board fails to attend a majority of the meetings of the board during any six-month period, the board shall declare the position vacant, and the position shall be filled in the same manner as by this section for other vacancies.

(e) Whenever notice is required under this section, the notice shall be given by first class mail.

**History.** Acts 1993, No. 524, § 1; 1993, No. 1138, § 1.

**Amendments.** The 1993 amendment

by No. 1138, which specifically amended Acts 1993, No. 524, rewrote (c)(2).

### SUBCHAPTER 3 — CONSOLIDATED SYSTEMS FOR JOINT OPERATION

SECTION.

- 14-92-301. Authority to contract.
- 14-92-302. Commission members.
- 14-92-303. Authority as body politic.
- 14-92-304. Resolution for financial matters.
- 14-92-305. Notice and hearing on bonds.

SECTION.

- 14-92-306. Borrowing of money.
- 14-92-307. Schedule of rates.
- 14-92-308. Use of net revenues.
- 14-92-309. Extension of facilities.
- 14-92-310. Right of eminent domain.

**Preambles.** Acts 1959, No. 262 contained a preamble which read: "WHEREAS, There are many improvement districts organized under the authority of the suburban improvement district laws and the municipal improvement district laws that are contiguous or adjacent and which can be more efficiently operated, maintained and extended under a central control; and

"Whereas, the improvements originally contemplated by the organization of the districts have been constructed and completed, but by reason of growth of the community the facilities are inadequate and should be enlarged and extended,

requiring additional capital;  
"Now, therefore...."

**Effective Dates.** Acts 1959, No. 262, § 10: Mar. 25, 1959. Emergency clause provided: "In order to secure efficiency and economy in the operation of water and sewer services and to promote the health and comfort of residents of such districts, there is a need for the authorization granted by this Act, and therefore an emergency is declared; and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force upon its passage and approval."



**14-92-301. Authority to contract.**

(a) Where there are contiguous or adjacent districts organized under the suburban improvement district laws or the municipal improvement district laws for either water, sewer or gas pipeline services, or any combination thereof, it shall be permissible for all or any two (2) or more of such districts, suburban, municipal, or any combination thereof, to enter into a contract with each other for the joint operation, maintenance, improvement, enlargement, and betterment of their respective systems or of the consolidated system, to be paid for by charges for the services.

(b)(1) Any such district which has paid its outstanding bonds in indebtedness, but which has not been turned over to the municipality for operation, may join in contracts for joint operation.

(2) Any facilities constructed by any districts outside their boundaries shall be included in the consolidated systems.

**History.** Acts 1959, No. 262, § 1; A.S.A. 1947, § 20-732; Acts 1997, No. 1134, § 6.

**A.C.R.C. Notes.** The punctuation in the 1997 amendment to this section is incorrect or does not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

**Amendments.** The 1997 amendment substituted "either water, sewer or gas pipeline services, or any combination thereof" for "either water or sewer services, or both" in (a).

**14-92-302. Commission members.**

(a)(1) When two (2) or more districts enter into a contract described in § 14-92-301, they shall jointly petition the county judge of the county in which the districts lie to appoint a commission of three (3) members, all of whom shall be property owners and electors within the territory affected.

(2) In the event there are more than two (2) districts joining in the petition, no two (2) of the commissioners shall be appointed from the same district.

(b) The members of the commission shall proceed to organize by:

(1) First taking the oath of office as prescribed for a commissioner of a suburban improvement district;

(2) Electing a chairman and a secretary; and

(3) Selecting a name for the consolidated system.

(c)(1) The commission members shall have the authority to carry out the powers conferred by this subchapter.

(2) In all other respects, the commission shall be governed by and have all the authority of § 14-234-301 et seq.

**History.** Acts 1959, No. 262, § 4; A.S.A. 1947, § 20-735.

**14-92-303. Authority as body politic.**

(a) Any consolidation of improvement districts shall be a body politic as a governmental and political subdivision of the state.

(b) The consolidated systems shall exercise the authority conferred in this subchapter according to the provisions, applicable and not in conflict herewith, of § 14-234-201 et seq. for the details of the issuance of revenue bonds, the pledge in the resolution of the commissioners, the determination of revenue for the payment of bonds, depreciation account, audits, rights of bondholders, and all other matters connected therewith.

**History.** Acts 1959, No. 262, § 2;  
A.S.A. 1947, § 20-733.

**14-92-304. Resolution for financial matters.**

(a) After the execution of the contract for consolidation, the commissioners provided for in § 14-92-302 shall adopt a resolution setting forth their estimate of the cost of retiring outstanding bond issues, together with the cost of the contemplated improvements and betterments, and a brief description thereof, and provide for the issuance of revenue bonds including the amount, rate of interest, time and place of payment, and other details connected with them.

(b) The resolution shall also:

(1) Declare that a statutory mortgage lien shall exist upon the property of the consolidated system;

(2) Fix the minimum rates to be collected prior to the payment of the bonds; and

(3) Pledge the revenues derived from its services for the purpose of paying the bonds and interest.

**History.** Acts 1959, No. 262, § 2;  
A.S.A. 1947, § 20-733.

**14-92-305. Notice and hearing on bonds.**

(a) After the adoption of the resolution, it shall be published once in a newspaper published in the county where the system lies. If there is no newspaper so published, then the resolution shall be posted in at least three (3) public places in the county, with a notice to all persons concerned stating that the resolution has been adopted, that the consolidated system contemplates the issuance of the bonds so described, and that any person interested may appear before the county judge of the county upon a certain date, not less than ten (10) days subsequent to the publication or posting, to present protests.

(b) The judge shall hear all objections and suggestions and take such action as he shall deem proper in the premises.

**History.** Acts 1959, No. 262, § 3;  
A.S.A. 1947, § 20-734.

**CASE NOTES****Judicial Review.**

The district must act for the benefit of all the affected property owners, and if any property owner feels aggrieved, he has the right to have the decision of the

improvement district judicially reviewed. Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

**14-92-306. Borrowing of money.**

(a) Consolidated systems may borrow money to pay and discharge any outstanding bond issues and indebtedness of the districts joining in the consolidations and may borrow money also for improvement, enlargement, and betterment of the facilities of the consolidated systems.

(b) To accomplish these purposes, the consolidated systems may issue negotiable coupon bonds or certificates of indebtedness evidencing the money so borrowed, to:

(1) Be secured solely by a pledge of the net revenues derived from the operation of the facilities;

(2) Bear interest not to exceed six percent (6%) per annum;

(3) Mature at such times and places as the issuer shall decide best, but in no event to mature later than forty (40) years after date of issue;

(4) Be issued with such terms of payment, call provisions, and interest rates as the issuer may decide best; and

(5) Be sold with the privilege of conversion to lower interest rates.

**History.** Acts 1959, No. 262, § 1;  
A.S.A. 1947, § 20-732.

**14-92-307. Schedule of rates.**

The commission of the consolidated systems shall have the power to fix the schedule of rates for its services.

**History.** Acts 1959, No. 262, § 6;  
A.S.A. 1947, § 20-737.

**14-92-308. Use of net revenues.**

(a) The net revenues from a joint operation shall be used first to pay the principal and interest as they mature of revenue bonds issued under this subchapter.

(b) Any remaining net revenues may be used to provide funds or pay bonds and interest issued for improvements, extensions, and betterments.

**History.** Acts 1959, No. 262, § 5;  
A.S.A. 1947, § 20-736.



**14-92-309. Extension of facilities.**

(a)(1) Consolidated systems may extend facilities to serve adjacent or nearby areas without applying for a certificate of convenience and necessity.

(2) These systems shall not be limited by the original boundaries of the districts joining in the consolidation.

(b) The operations shall be a governmental function of the consolidated systems, and they may not be required to so extend their services.

**History.** Acts 1959, No. 262, § 7;  
A.S.A. 1947, § 20-738.

**14-92-310. Right of eminent domain.**

For the purpose of carrying out the provisions of this subchapter, the consolidated systems shall have the right of eminent domain as is provided in §§ 18-15-301 — 18-15-307.

**History.** Acts 1959, No. 262, § 8;  
A.S.A. 1947, § 20-739.

**SUBCHAPTER 4 — SALE OF PROPERTY BY DISTRICT****SECTION.**

14-92-401. Petition by landowners.

14-92-402. Procedure for sale.

**SECTION.**

14-92-403. Provisions cumulative.

**14-92-401. Petition by landowners.**

(a)(1) The owners of a two-thirds ( $\frac{2}{3}$ ) majority in value as shown by the last county assessment of the real property within any suburban improvement district may, by written petition, require the board of commissioners of the district to sell all or any portion of the real or personal property, or both, owned by the district.

(2)(A) The petition shall specify with reasonable certainty what property is to be sold and shall stipulate the sale price and may specify such other terms and conditions of the sale as to the petitioners may seem desirable.

(B) The sale price shall in no event be a sum less than the amount necessary to pay all the outstanding secured indebtedness against the property to be sold.

(b) Upon the filing of the petition, the board shall give notice by publication once a week for two (2) weeks in some newspaper having a general circulation throughout the district, advising the owners of real property within the district that on a day therein named the commissioners will hear the petition and determine whether those signing it constitute a two-thirds ( $\frac{2}{3}$ ) majority in value of the owners of real property within the district.

(c)(1) At the meeting named in the notice, the owners of real property within the district shall be heard before the board which shall deter-

mine whether the signers of the petition constitute a two-thirds ( $\frac{2}{3}$ ) majority in value.

(2)(A) The finding of the commissioners shall be conclusive, unless within thirty (30) days thereafter, suit is brought to review its action in the chancery court of the county in which the district was organized.

(B) In determining whether those signing the petition constitute a two-thirds ( $\frac{2}{3}$ ) majority in value of the owners of the real property within the district, the commissioners and the court shall be guided by the record of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument.

**History.** Acts 1965, No. 377, § 1;  
A.S.A. 1947, § 20-740.

### CASE NOTES

#### Judicial Review.

The improvement district must act for the benefit of all the affected property owners, and if any property owner feels aggrieved, he has the right to have the

decision of the district judicially reviewed. Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Rd. & St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).

#### 14-92-402. Procedure for sale.

Upon determination of the sufficiency of the petition, the board of commissioners shall proceed to sell the property which the property owners have petitioned to have sold, subject to the terms of the petition.

**History.** Acts 1965, No. 377, § 2;  
A.S.A. 1947, § 20-741.

#### 14-92-403. Provisions cumulative.

This subchapter shall not be deemed to repeal any other legislation authorizing the sale of improvement district property, but shall be cumulative to all such existing legislation.

**History.** Acts 1965, No. 377, § 3;  
A.S.A. 1947, § 20-741n.

## SUBCHAPTER 5 — SYSTEMS TURNED OVER TO MUNICIPALITIES

### SECTION.

14-92-501. Applicability.

14-92-502. Water or sewer systems.

**Preambles.** Acts 1959, No. 146, contained a preamble which read: "WHEREAS, Due to the rapid growth of suburban housing, many of the areas adjacent to municipalities have organized improve-

ment districts under the suburban improvement district law and have been collecting assessments of benefits in addition to the charges for the services of the facility constructed, and it is to the best

interests of the residents of both the suburbs and the municipality to have the management and operation of the facilities; and

"Whereas, The municipalities may operate their water and sewer facilities on a revenue basis and are able to pay the bonds therefor without levying a tax on an assessment of benefits, and can thus effect a saving to the property owners and at the same time produce a more efficient service by the facilities; Now, therefore ...."

**Effective Dates.** Acts 1959, No. 146,

§ 3: Mar. 3, 1959. Emergency clause provided: "In order to secure efficiency and economy in the operation of water and sewer services and to promote the health and comfort of residents adjacent to a municipality, there is a need for the authorization granted by this Act, and therefore an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force upon its passage and approval."

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### 14-92-501. Applicability.

Any municipality that has a population of twenty-five thousand (25,000) or more according to the last federal census shall be entitled to exercise the authority conferred by this subchapter.

**History.** Acts 1959, No. 146, § 1; A.S.A. 1947, § 20-730.

### 14-92-502. Water or sewer systems.

(a) In those cases where improvement districts have been organized under the suburban improvement district law, or any consolidation of suburban and municipal improvement districts, either for furnishing of water or sewer services, or both, and all, or any part, of it lies outside a municipality within the class affected by this subchapter which desires to operate it as a municipal waterworks or a municipal sewer system, the boards of commissioners of the suburban district, in order to secure more adequate service for the inhabitants within the district, shall have the authority to turn over to the municipality the operation and maintenance of the system.

(b)(1) The municipality may issue revenue bonds, fix the rates for the services, and use the net revenues from the operation to pay the principal and interest and paying charges of its revenue bonds for payment and discharge of the outstanding bonds of the districts.

(2) If the net revenues are not sufficient to prevent a default in the bonds or interest, a tax sufficient to produce enough revenue to cure the default shall be levied on the assessments of benefits in the districts.

(3) Nothing in this section shall impair the rights of the holders of the outstanding bonds to demand and receive sufficient annual collections on the assessments of benefits to meet interest and principal payments as they become due.

**History.** Acts 1959, No. 146, § 2; A.S.A. 1947, § 20-731.



**SUBCHAPTER 6 — COLLECTION OF TAXES****SECTION.**

14-92-601. Applicability.

14-92-602. Election to collect taxes.

**SECTION.**

14-92-603. Collection of delinquent taxes.

**14-92-601. Applicability.**

(a)(1) This subchapter shall be applicable to suburban improvement districts organized and existing pursuant to the provisions of § 14-92-201 et seq. with an area of not less than five thousand (5,000) acres and not more than seven thousand (7,000) acres.

(2) These districts will be referred to as “eligible districts.”

(b) This subchapter shall apply to taxes to be collected in 1986 and subsequent years.

**History.** Acts 1985, No. 430, § 1;  
A.S.A. 1947, § 20-746.

**14-92-602. Election to collect taxes.**

(a)(1) Any eligible district may elect to collect the taxes levied by it pursuant to the provisions of §§ 14-92-228 and 14-92-239. This election shall be made by resolution of the board of commissioners of the eligible district.

(2) Certified copies of the resolution shall be filed with the county clerk and county tax collector of each county in which any of the territory of the district is located, not later than July 15 of the year immediately preceding the first year in which the district will collect the taxes.

(b) Once the election is made, and so long as it continues in force, the clerk shall no longer extend the district taxes upon the county tax books and the collector shall no longer collect the district taxes. The district shall be solely responsible for collecting the taxes, which shall be due and payable on or before October 10 of each year.

(c)(1) Once an eligible district makes the election provided for in this section to collect its own taxes, the election shall continue in effect and the district shall collect its own taxes unless and until the election is revoked.

(2)(A) The election may be revoked by resolution of the board of the district, and the filing of certified copies thereof with the clerk and collector of each county in which any of the territory of the district is located, such filing to be made on or before July 15 of any year.

(B) The revocation shall be effective as to taxes to be collected in the year immediately succeeding the year in which the revocation is filed.

**History.** Acts 1985, No. 430, § 2;  
A.S.A. 1947, § 20-747.

**14-92-603. Collection of delinquent taxes.**

(a) If an eligible district has elected to collect its own taxes in accordance with the provisions of § 14-92-602, the district shall also be responsible for and shall have the sole authority to take action to collect taxes that have become delinquent.

(b)(1) Any eligible district that has not elected to collect its own taxes pursuant to § 14-92-602 may, nevertheless, elect to assume sole responsibility for the collection of its taxes that have become delinquent.

(2)(A) This election shall be made by resolution of the board of commissioners of the eligible district, and a certified copy of the resolution shall be filed with the county tax collector of each county in which any of the territory of the district is located, prior to October 10 of any year.

(B) The election shall be effective for taxes becoming delinquent in the year of filing.

(c)(1) If an eligible district has responsibility under this section for collecting its own delinquent taxes, or if it elects to assume this responsibility, the collector shall take no action to enforce collection of delinquent taxes.

(2) In the case where the district has elected to collect only delinquent taxes, the collector shall report delinquencies to the board of the district.

(d) Where it is the responsibility of the district to collect delinquent taxes, it shall add to the amount of the tax a penalty of twenty-five percent (25%) and shall enforce collection by chancery proceedings in the chancery court of the county, in the manner provided by §§ 14-121-426 — 14-121-432.

(e)(1) Once a district makes the application to collect its own delinquent taxes, the election shall continue in effect until revoked.

(2)(A) Revocation shall be by resolution of the board and the filing of certified copies thereof with the collector of each county in which any of the territory of the district is located.

(B) These filings shall be made on or before October 10 of any year and shall be effective as to taxes becoming delinquent in such year.

**History.** Acts 1985, No. 430, § 3;  
A.S.A. 1947, § 20-748.

**CHAPTER 93**

**PROPERTY OWNERS' IMPROVEMENT DISTRICTS**

**SECTION.**

- 14-93-101. Title.
- 14-93-102. Legislative intent.
- 14-93-103. Definitions.
- 14-93-104. Construction.
- 14-93-105. Petition to form district.
- 14-93-106. Hearing on petition and determination.

**SECTION.**

- 14-93-107. Board of commissioners generally.
- 14-93-108. Removal of board members.
- 14-93-109. Planning by board.
- 14-93-110. Purposes for which district organized.
- 14-93-111. Powers of districts generally.

## SECTION.

- 14-93-112. Corporate powers.
- 14-93-113. Right and power of eminent domain.
- 14-93-114. Sale of land.
- 14-93-115. Priority of cases.
- 14-93-116. Assessment of benefits and damages.
- 14-93-117. Filing and notice of assessment — Hearing.
- 14-93-118. Reassessment.
- 14-93-119. Levy of tax.
- 14-93-120. Interest on assessment.
- 14-93-121. Extension and collection of taxes.
- 14-93-122. Subsequent levies.
- 14-93-123. Payment of taxes — Enforcement.
- 14-93-124. Negotiable notes, bonds, or evidences of debt.

## SECTION.

- 14-93-125. Bonds — Tax exemption.
- 14-93-126. Payment of bonds and interest.
- 14-93-127. Dissolution of district.
- 14-93-128. Lien for preliminary expenses.
- 14-93-129. Continued existence of district.
- 14-93-130. Systems turned over to municipality.
- 14-93-131. Consolidated systems authorized.
- 14-93-132. Connections outside district boundaries.
- 14-93-133. Annexation of lands outside district boundaries.

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**Cross References.** Deputies employed by property owners associations, insurance, § 14-15-503.

Municipal property owner's improvement district law, § 14-94-101 et seq.

**Effective Dates.** Acts 1983, No. 613, § 27: Mar. 21, 1983. Emergency clause provided: "It has been found and it is hereby declared that the laws of Arkansas pertaining to improvement districts do not at this time provide for the formation and operation of such district on the basis of the consent of all the owners of real property within such districts and that this inadequacy is causing the delay of the accomplishment of projects which are greatly needed and in the public interest. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval."

Acts 1985, No. 296, § 12: Mar. 11, 1985. Emergency clause provided: "It is hereby found and declared that the laws of Arkansas pertaining to the organization and operation of property owners improvement districts as authorized by Act 613 of 1983 are inadequate and must be clarified and supplemented in order to permit such districts to effectively carry out the purposes for which they have been created; and that this inadequacy is causing the delay of the accomplishment of projects and improvements of a public nature

which are greatly needed and in the best interests of the inhabitants of each such district. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval."

Acts 1987, No. 787, § 6: Apr. 8, 1987. Emergency clause provided: "It is hereby found and declared that the laws of Arkansas pertaining to the organization and operation of property owners improvement districts as authorized by Act 613 of 1983 are inadequate and must be clarified and supplemented in order to permit such districts to effectively carry out the purposes for which they have been created; and that this inadequacy is causing the delay of the accomplishment of projects and improvements of a public nature which are greatly needed and in the best interests of the inhabitants of each such district. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 37, § 7: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulation of small water and sewer utilities as 'public utilities' under the jurisdiction of the Public Service Commission generally imposes heavy regulatory costs upon the



consumers, so that the cost of preparing a rate case alone may equal or exceed the other total revenue requirements of those utilities; that the effect of regulation is often to increase costs that are proportionately far in excess of the benefits of regulation; that customers of small water and sewer utilities may be better off in the long run if they could simply buy their water or sewer utility outright and run it themselves; and that this Act is immediately necessary to remedy the present situation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 504, § 7: Mar. 13, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-

Eighth General Assembly of the State of Arkansas that the impairment of the rights of owners of real property located within various improvement districts to prepay their assessments greatly infringes on their rights to own, manage, and enjoy their real property and that it must be made unimpeachably clear that these owners of real property do have and should have the right to prepay these assessments and to be released from the liens upon the prepayment of these assessments. Therefore, in order to clarify and extend rights of owners of real property located within various improvement districts, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

### 14-93-101. Title.

This chapter may be known and cited as the "Property Owners' Improvement District Law."

**History.** Acts 1983, No. 613, § 1; 1985, No. 296, § 1; A.S.A. 1947, § 20-2401.

### 14-93-102. Legislative intent.

(a) It is the intent and purpose of this chapter to authorize the formation of improvement districts by the unanimous approval of all owners of real property located in the territory to be included in the district if all the real property to be located in the district is owned by twenty-five (25) or fewer persons.

(b) It is the intention of Acts 1985, No. 296, to amend or repeal only such sections or subsections of Acts 1983, No. 613, as are specifically mentioned in Acts 1985, No. 296, and the remainder of Acts 1983, No. 613, shall remain in full force and effect as enacted until Acts 1983, No. 613, shall be further amended or repealed.

**History.** Acts 1983, No. 613, § 1; 1985, No. 296, §§ 1, 11; A.S.A. 1947, §§ 20-2401, 20-2401n.

**Publisher's Notes.** Acts 1985, No. 296, is codified as §§ 14-93-101 — 14-93-103,

14-93-107, 14-93-111, 14-93-124, 14-93-125, and 14-93-130 — 14-93-132.

Acts 1983, No. 613, is codified as §§ 14-93-101 — 14-93-129.

**14-93-103. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Board" means any board of commissioners appointed pursuant to this chapter;

(2) "District" means any improvement district formed under the provisions of this chapter;

(3) "Improvement" means any lands, structures, improvements, fixtures, and appurtenant equipment acquired, constructed, improved, or equipped by a district;

(4) "Nearby municipality" means any municipality located within ten (10) miles of any boundary of a district;

(5) "Person" means an individual, corporation, partnership, association, firm, or other entity recognized by law as having capacity to own real property in the State of Arkansas. As used in this chapter, person shall include a husband and wife owning property jointly;

(6) "Land" or "real property" means all property subject to taxation for the purposes of this chapter;

(7) "County court", "county judge", or "county clerk" means "circuit court", "circuit judge", or "circuit clerk" in the cases where the district contains lands in more than one (1) county.

**History.** Acts 1983, No. 613, §§ 2, 3, 7; 1985, No. 296, § 2; A.S.A. 1947, §§ 20-2402, 20-2403, 20-2407.

**14-93-104. Construction.**

The provisions of this chapter shall be liberally construed to accomplish the purposes of this chapter, and this chapter shall be the sole authority necessary to accomplish its purposes. To this end, it shall not be necessary to comply with the requirements of other laws in acting pursuant to this chapter to accomplish its purposes.

**History.** Acts 1983, No. 613, § 24; A.S.A. 1947, § 20-2424.

**14-93-105. Petition to form district.**

(a) Upon the petition of all the owners of the record title as reflected by the deed records in the office of the circuit clerk and ex officio recorder of the pertinent county of real property in any territory, all the real property of which territory is owned by twenty-five (25) or fewer persons, it shall be the duty of the county court to:

(1) Lay off into an improvement district the territory described in the petition for the purpose of:

(A) Purchasing, accepting as a gift, constructing, or maintaining waterworks, recreational facilities, systems of gas pipelines, and sewers;

(B) Grading, draining, paving, curbing, and guttering streets and highways and laying sidewalks;

(C) Establishing, equipping, and maintaining rural fire departments; or

(D) More than one (1) of such purposes; and

(2) Name as commissioners of the district the three (3) persons whose names appear in the petition, if the petition contains names, or, if not, three (3) individuals of integrity and good business ability.

(b) Portions of municipalities may be included in these districts if the portion of area located within municipalities shall be less than fifty percent (50%) of the area of the entire district.

(c) All districts shall be numbered consecutively or else shall receive names selected by the court.

(d) If the court does not act promptly in complying with the terms of this section, or of any other section of this chapter essential to the creation and operation of the district, it may be compelled to do so by mandamus.

(e)(1) If land in more than one (1) county is embraced in the proposed district, the petition shall be addressed to the circuit court in which the largest portion of the lands lie, and all proceedings shall be had in that court.

(2) Any notices in that event shall be published in newspapers published and having a bona fide circulation in each county in which the district embraces land.

(f) Any number of petitions may be circulated, and identical petitions with additional names may be filed at any time until the court acts.

**History.** Acts 1983, No. 613, § 3;  
A.S.A. 1947, § 20-2403; Acts 1987, No.  
787, § 1.

#### **14-93-106. Hearing on petition and determination.**

(a)(1) Upon the filing of a petition, it shall be the duty of the county clerk to present the petition to the county judge.

(2) The judge shall thereupon set a date and time, not later than ten (10) days after the date of the presentation of the petition to the judge, for a hearing, before the county court, for consideration of the petition.

(b)(1) At the hearing, it shall be the duty of the court to hear the petition and to ascertain whether those signing it constitute all the owners of the real property to be located in the district.

(2)(A) If the court determines that all the owners of the real property to be located in the district have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appointing the commissioners named in the petition if commissioners are named therein and are property holders in the district.

(B) If the court finds that fewer than all the owners have signed the petition, it shall enter its order denying the petition.

(c)(1) Any petitioner or any opponent of the petition may appeal from the judgment of the court creating or refusing to create the district.



However, appeal must be taken and perfected within thirty (30) days after entry of the judgment.

(2) If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

(d)(1) The petition shall state the specific purpose for which the district is to be formed, and the judgment establishing the district shall give it a name which shall be descriptive of the purpose.

(2) The district shall also receive a number to prevent its being confused with other districts formed for similar purposes.

**History.** Acts 1983, No. 613, § 4;  
A.S.A. 1947, § 20-2404.

#### **14-93-107. Board of commissioners generally.**

(a)(1)(A) Within thirty (30) days after their appointment, the members of a board of commissioners shall take and file with the county clerk their oath of office, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to discharge faithfully their duties as commissioners, and to not be interested, directly or indirectly, in any contract let by the board except upon the approval of all the owners of real property located in the district.

(B) Any commissioner failing to file this oath within this period shall be deemed to have declined the office and the county court shall appoint some property holder as his successor, who shall qualify in like manner within a like time.

(2)(A) In case of a vacancy on the board, after the members have organized, the remaining commissioners shall select the successor.

(B) The person so selected shall qualify by taking the oath of office as prescribed for the original commissioners.

(b)(1)(A) The board shall organize by electing one (1) of its members chairman and another as secretary.

(B) The board may also employ such agents, servants, engineers, and attorneys as it deems best and fix their compensation and the compensation of the secretary.

(2) The board shall also select some solvent bank or trust company as the depository of its funds.

(c) In addition to and not by way of limitation of the above powers, the board shall have the power to:

(1) Make and execute all contracts, leases, conveyances, and other instruments of the district;

(2) Join with any other political subdivision, municipality, district, or government agency, either state or federal, in the acquisition, construction, maintenance, operation, and financing of any of the facilities, works, or operations authorized by this chapter or as to the performance of any of its functions;

(3) Establish rules and regulations for the transaction of the district's business and for the services, use, and right to use of its facilities or services, or both, or to effectuate any purpose of this chapter;

(4) Do all things incidental or auxiliary to the exercise of the express powers granted by this chapter; and

(5) Perform all actions useful to carry out the purposes of this chapter, unlimited by any express provision of this section.

(d) No member of the board shall be liable for any damages unless it shall be made to appear that he acted with a corrupt and malicious intent.

**History.** Acts 1983, No. 613, §§ 5, 16;  
1985, No. 296, § 3; A.S.A. 1947, §§ 20-  
2405, 20-2416.

#### **14-93-108. Removal of board members.**

(a) When the owners of two-thirds ( $\frac{2}{3}$ ) in assessed value of the real property located within any district shall sign a petition stating that the petitioners believe it to be in the best interest of the district that the board, or any member thereof, be removed and shall file it with the county court of the county in which the district is located, the court shall set a date for a hearing thereon and shall give notice thereof by one (1) publication in a newspaper of general circulation in the district at least ten (10) days before the date of the hearing.

(b)(1) The purpose of the hearing shall be to determine the sufficiency of the petition.

(2) Any property owner of the district may appear and present evidence either in support of or against the sufficiency of the petition.

(c)(1) If, after hearing the evidence presented, the court shall determine that the petition is signed by at least two-thirds ( $\frac{2}{3}$ ) in assessed value of the real property owners in the district, the court shall forthwith enter an order of the court removing the member of the board in accordance with the petition.

(2) The vacancies thereby created shall be filled in the manner prescribed by law.

**History.** Acts 1983, No. 613, § 23;  
A.S.A. 1947, § 20-2423.

#### **14-93-109. Planning by board.**

(a) The board shall form plans relative to the acceptance, purchase, or construction of the improvement.

(b) To that end, the board may employ such engineers, attorneys, and other assistants as it may find necessary and shall file copies of all pertinent reports and actions by its members with the county clerk.

**History.** Acts 1983, No. 613, § 7;  
A.S.A. 1947, § 20-2407.

**14-93-110. Purposes for which district organized.**

Any district may be organized for any one (1) or more of the following purposes:

(1) To purchase, accept as a gift, or construct a waterworks system or betterments, improvements, and extensions to such waterworks system, either within or without the boundaries of the district if the property of the district will be benefited thereby and to operate and maintain any such waterworks system it may purchase, construct, or own;

(2) To purchase, accept as a gift, or construct, either within or without the boundaries of the district, if the property of the district will be benefited thereby, a sewage collection system or a sewage treatment plant, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection or treatment, purification, and disposal of industrial or domestic sewage;

(3) To open, grade, drain, pave, curb, gutter, or otherwise improve streets, roads, highways, and every other way, including viaducts and underpasses for passage and use of vehicles, either within or without the boundaries of the district, if the property of the district will be benefited thereby. Such purpose shall include the acquisition of rights-of-way by purchase or the exercise of the power of eminent domain, and to maintain such streets, roads, highways, and every other way for passage and use by vehicles, lying within the boundaries of the district or beyond the boundaries of the district, if the property of the district will be benefited thereby;

(4) To build, purchase, or accept as a gift recreational facilities such as, but not limited to, parks, lakes, golf courses, playgrounds, clubhouses, stadiums, auditoriums, arts and crafts centers, folklore centers, interpretative centers, camping areas, green belt areas, and any other facilities to provide for the recreation and cultural needs of the owners of the lands within the district;

(5) To lay and maintain sidewalks;

(6) To lay gas pipelines connecting with gas systems in nearby or adjacent municipalities;

(7) To build telephone lines to connect with the telephone system operating in nearby or adjacent municipalities; and

(8) To establish, equip, and maintain rural fire departments including construction of fire department buildings, and purchase of fire trucks, fire boats, and other fire fighting equipment.

**History.** Acts 1983, No. 613, § 6;  
A.S.A. 1947, § 20-2406.



**14-93-111. Powers of districts generally.**

(a) Any district, in aid to and furtherance of the purposes prescribed in § 14-93-110, shall have the authority to hire managers and other employees and to pay their salaries incident to the operation and maintenance of any of the improvements authorized in this chapter. It shall also have the authority to acquire and purchase equipment and machinery incident to the operation and maintenance of such facilities and shall be further authorized to do any and all other actions which shall be deemed necessary in order to purchase, construct, accept as a gift, operate, and maintain any and all improvements authorized in this chapter.

(b) Any district shall have the power to sell or lease any improvement owned by it to any adjacent or nearby municipality, or district therein or another improvement district within or near the county, to public service corporations serving on behalf of the property owners of the district, or to any other corporation, organization, or person, and may make contracts with the inhabitants of nearby municipalities, or it may operate any such improvement and may connect any such improvement with the improvements, systems, and transmission lines of any municipality or other district, and with respect to sewers, may carry its sewers to any proper outlet within or without the district.

(c) Any district may accept as a gift any or all of the improvements and facilities authorized in this chapter upon the assumption of the maintenance and operation of the improvement and shall have the authority to effect the assessment of benefits and to levy the necessary tax against the assessment of benefits, as provided in this chapter, in order to provide the revenue for the costs of maintenance and operation.

**History.** Acts 1983, No. 613, § 6; 1985, No. 296, § 4; A.S.A. 1947, § 20-2406.

**14-93-112. Corporate powers.**

Each district shall be a body corporate with power to sue and to be sued, and it shall have a corporate seal.

**History.** Acts 1983, No. 613, § 5; 1985, No. 296, § 3; A.S.A. 1947, § 20-2405.

**14-93-113. Right and power of eminent domain.**

(a)(1) All districts organized under this chapter shall have the right of eminent domain in order that they may carry out the purposes of their creation.

(2) This right shall be exercised in the same manner as in the case of railroad, telegraph, and telephone companies, but without the necessity of making a deposit of money before entering into possession of the property condemned.

(b)(1) Any district shall have the power of eminent domain for the purposes of:

(A) Condemning any water or sewer utility found within the boundaries of the district which is exempt from the definition of "public utility" as found in § 23-1-101(4);

(B) Securing any lands or rights-of-way needed in making improvements to water or sewer systems owned and operated by that district.

(2)(A) The board of the district shall have the power to enter upon any private property for the purposes stated in subdivision (b)(1) of this section. If the person is damaged and the board cannot agree on the sum to be paid for the damages, the person aggrieved may file his petition in the circuit court of the county setting forth his grievance and asking compensation therefor, making the board a party defendant. The issues in the suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties. The case shall be advanced on the docket so as to have precedence over all other causes. The judge of the circuit court may hold a special term at any time for the trial of the cause, giving ten (10) days' notice to the parties of the time of holding the special term. This notice may be in writing and shall be served on the parties as a writ of summons is directed to be served unless the notice is waived by the parties, or one of them.

(B) In case an agreement cannot be arrived at between the board of improvement and the owner of the property in relation to the damages claimed, the judge of the court, in vacation, may fix an amount to be deposited with some person, to be designated by the court, before the entering upon and taking possession of the property to be used and taken as provided in this section. Upon the amount required being deposited and certificate thereof filed in the cause, the work may proceed.

**History.** Acts 1983, No. 613, § 21; A.S.A. 1947, § 20-2421; Acts 1987 (1st Ex. Sess.), No. 37, § 4.

**Cross References.** Eminent domain by railroad, telegraph, and telephone companies, § 18-15-1201 et seq.

### CASE NOTES

**Cited:** Property Owners Imp. Dist. No. 247 v. Williford, 40 Ark. App. 172, 843 S.W.2d 862 (1992).

### 14-93-114. Sale of land.

Any land that may be acquired by any district organized under this chapter may be sold by the board thereof for the price and on the terms it deems best.

**History.** Acts 1983, No. 613, § 22; A.S.A. 1947, § 20-2422.

**14-93-115. Priority of cases.**

All cases involving the validity of districts or the assessment of benefits and all suits to foreclose the lien or taxes shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment, and all appeals from them must be taken and perfected within thirty (30) days.

**History.** Acts 1983, No. 613, § 19;  
A.S.A. 1947, § 20-2419.

**14-93-116. Assessment of benefits and damages.**

(a)(1) In the event that the board shall have voted to accept any offer of gift, shall have voted to purchase any improvement, or shall have voted to construct any improvement, it shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the district from the acceptance of the gift of improvement, the purchase of the improvement, or the construction of the improvement.

(2) The assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the district by reason of the acceptance, purchase, or construction of the proposed improvement. He shall thereupon proceed to assess the lands within the district.

(b)(1) The assessor shall inscribe in a book each tract of land and shall place in one column his valuation of each tract or parcel of land prior to the improvement, which may be marked "Assessed Value of Lands Prior to Improvements," and in another column he shall place what he thinks will be the value of each tract or parcel of land after the improvement, which may be marked "Assessed Value of Lands After Improvement."

(2)(A)(i) If the assessed value of land after improvements is greater than the assessed value of land before improvements, as assessed by the assessor for the district, then the difference between the two shall be the assessed benefits that will accrue to each tract by reason of the improvement.

(ii) If the assessed value of land, as assessed by the assessor of the district, after the improvement is acquired or made is less than the assessed value of land before improvements are acquired or made, as assessed by the assessor for the district, then the difference between the two shall be the assessed damages that will accrue to the particular parcel or tract of land by reason of the improvement.

(B) The assessor shall enter the assessment of benefits or damages opposite the description of each piece of property in appropriate columns, one of which may be marked "Assessed Benefits" and the other may be marked "Assessed Damages," and in another column the assessor shall show the estimate of the probable cost to the landowner, which may be marked "Estimated Cost."

(c)(1) The assessment shall embrace not merely the lands, but all railroads, tramroads, telegraph lines, telephone lines, pipelines, and



other improvements on real estate that will be benefited by the acquiring or making of the improvement.

(2) No assessment shall apply against any pipelines or other improvements which are extensions of or connected to the pipeline distribution system or other improvements within any city adjacent to the district.

(d)(1) The assessor shall place opposite each tract the name of the supposed owner as indicated by the deed records, but a mistake in name shall not vitiate the assessment.

(2)(A) The assessor shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged.

(B) Where the assessor returns no such damages to any tract of land, it shall be deemed a finding by him that no damages will be sustained.

(e) The assessor shall hold his office at the pleasure of the board, which can fill any vacancy in the position of assessor.

**History.** Acts 1983, No. 613, § 7;  
A.S.A. 1947, § 20-2407.

CASE NOTES

ANALYSIS

Benefits for improvement.  
Burden of proof.

Property Owners Imp. Dist. No. 247 v. Williford, 40 Ark. App. 172, 843 S.W.2d 862 (1992).

**Benefits for Improvement.**

Improvement district's right of eminent domain requires payment of the market value for the land taken without offset for any benefit the landowner may receive from the construction of the improvement.

**Burden of Proof.**

In a condemnation case where the issue is just compensation, the landowners have the burden of proof on that issue. Property Owners Imp. Dist. No. 247 v. Williford, 40 Ark. App. 172, 843 S.W.2d 862 (1992).

14-93-117. Filing and notice of assessment — Hearing.

- (a)(1) The assessment shall be filed with the county clerk.
- (2)(A) The secretary of the board shall thereupon give notice of its filing by publication once a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county.
- (B) This notice may be in the following form:

“Notice is hereby given that the assessment of benefits and damages of ..... District Number ..... has been filed in the office of the County Clerk of ..... County, and where it is open to inspection. All persons wishing to be heard on said assessment will be heard by the commissioners and the assessor of the district between the hours of 10 a.m. and 4 p.m., at ....., in the City of ....., Arkansas, on the ..... day of ....., 19.....

.....  
Secretary”

(b) On the day named in the notice, it shall be the duty of the commissioners and assessors to meet together at the place named as a board of equalization, to hear all complaints against the assessment, and to equalize and adjust it. Their determination shall be final, unless suit is brought in the chancery court within thirty (30) days to review it.

**History.** Acts 1983, No. 613, § 8;  
A.S.A. 1947, § 20-2408.

#### **14-93-118. Reassessment.**

(a) The board may, not more often than once a year, require the assessor to reassess the benefits in the district. However, in the event the district shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished.

(b) The reassessment shall be made, advertised, and equalized in the same manner as provided in this chapter for making the original assessment.

**History.** Acts 1983, No. 613, § 9;  
A.S.A. 1947, § 20-2409.

#### **14-93-119. Levy of tax.**

(a)(1) The board of the district shall, at the same time that the assessment of benefits is equalized or at any time thereafter, enter upon its records an order which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement, with ten percent (10%) added for unforeseen contingencies.

(2) The tax is to be paid by the real property in the district in the proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, as provided in the order.

(b) The tax so levied shall be a lien upon all the real property in the district from the time it is levied, shall be entitled to preference over all demands, executions, encumbrances, or liens whenever created, and shall continue until such assessment, with any penalty costs that may accrue thereon, shall have been paid. Provided, however, with the prior written approval of the board of the district, the county clerk shall release from the lien of the assessment and tax any lot, block, or tract with respect to which the assessment and tax shall have been paid or prepaid.

(c)(1) The remedy against the levy of taxes shall be by suit in chancery.

(2) The suit must be brought within thirty (30) days from the time of notice that the levy was made, and on the appeal, the presumption shall be in favor of the legality of the tax.

(d)(1) The board shall, promptly after entry of an order levying the tax, publish once a week for two (2) consecutive weeks in some

newspaper having general circulation in the district, a notice setting forth the order of levy and warning all persons affected thereby that it shall become final unless suit is brought to contest it within thirty (30) days of the date of first publication of the notice.

(2) No property owner shall be barred from contest of the levy within the thirty-day publication period.

**History.** Acts 1983, No. 613, § 10; A.S.A. 1947, § 20-2410; Acts 1991, No. 504, § 2.

#### **14-93-120. Interest on assessment.**

The assessment of the benefits shall bear interest at the rate of ten percent (10%) per annum from the time it is equalized. However, the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

**History.** Acts 1983, No. 613, § 11; A.S.A. 1947, § 20-2411.

#### **14-93-121. Extension and collection of taxes.**

(a)(1) When the board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set it opposite each benefit assessed in a column marked "Annual Collection."

(2)(A) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted.

(B) For his services, the clerk shall receive a commission of one and one-half percent (1½%) of the amount so extended.

(b)(1)(A)(i) It shall then be the duty of the tax collector of the county to collect each year the taxes extended upon the tax books along with the other taxes until the entire levy is exhausted.

(ii) For his services in making the collections, the collector shall receive a commission of one and one-half percent (1½%).

(B) The taxes shall be paid over by the collector to the depository of the district at the same time he pays over the county funds.

(2) In counties operating under the unit tax ledger system, the collector shall receive a commission of one and one-half percent (1½%) for extending the taxes and a commission of an additional one and one-half percent (1½%) for collecting the taxes.

(c)(1) County clerks and tax collectors are authorized to employ additional deputies to do the increased work imposed by the terms of this chapter.

(2) They may pay the deputies salaries up to the sum of five thousand dollars (\$5,000) per annum. However, the salaries shall never exceed the receipts from the commissions allowed by this chapter.



(d) No property owner shall be required to pay the improvement taxes provided in this chapter as a prerequisite to paying his general taxes.

**History.** Acts 1983, No. 613, § 12;  
A.S.A. 1947, § 20-2412.

#### **14-93-122. Subsequent levies.**

(a) If the tax first levied shall prove insufficient to pay the bonds, both the principal and interest, issued by the board on account of an improvement as provided in this chapter, as it shall become due and payable, the board shall, from time to time, make such further levies upon the property previously assessed for sums sufficient to complete the improvement and to pay such bonds and interest which shall be extended and collected in the same manner as the first levy. However, the total levy shall in no case exceed the value of the benefits assessed on the property with interest.

(b) The performance of the duties set forth in this section may be enforced by mandamus.

**History.** Acts 1983, No. 613, § 13;  
A.S.A. 1947, § 20-2413.

#### **14-93-123. Payment of taxes — Enforcement.**

(a) All taxes levied under the terms of this chapter shall be payable in installments at the same time as other state, county, and city taxes are paid.

(b) **DELINQUENCIES.** (1) If any taxes levied by the board under this chapter are not paid at maturity, the county tax collector shall not embrace the taxes in the taxes for which he shall sell the lands, but shall report the delinquencies to the board of the district, which shall add to the amount of the tax a penalty of twenty-five percent (25%).

(2) The board shall enforce the collection by chancery proceedings in the chancery court of the county in which the lands are situated having chancery jurisdiction. The court shall give judgment against the lands for the amount of the delinquent taxes, and the penalty of twenty-five percent (25%) and interest thereon, from the end of the sixty (60) days allowed for the collection thereof, at the rate of six percent (6%) per annum, and all costs of the proceeding.

(3) The judgments shall provide for the sale of the delinquent lands for cash by a commissioner of the court, after advertisement as set out in subsection (c) of this section.

(4) Proceedings and judgment shall be in the nature of proceedings in rem.

(5)(A) It shall be immaterial that the ownership of the lands be incorrectly alleged in the proceedings.

(B) Judgment shall be enforced wholly against the lands and not against any other property or estate of the defendant.

(6) All or any part of the delinquent lands for each of the counties may be included in one (1) suit for each county, instituted for the collection of the delinquent taxes, etc., as aforesaid.

(7) The procedures set forth in this section shall apply to all improvement districts subject to this chapter and shall apply retroactively to those improvement districts already subject to this chapter.

(c) NOTICE OF PROCEEDINGS FOR COLLECTION OF TAXES. Notice of the pendency of the suit shall be given by publication weekly for four (4) weeks before judgment is entered for the sale of the lands in some newspaper published in the county where the suits may be pending, which public notice may be in the following terms:

"Board of Commissioners, Property Owners' Improvement District  
vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described lands, are hereby notified that suit is pending in the Chancery Court of \_\_\_\_\_ County, Arkansas, to enforce the collection of certain property owners' improvement district taxes on the subjoined list of lands, each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to wit: "

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent lands, and amounts due thereon respectively as aforesaid), and said public notice may conclude in the following form:

"All persons and corporations interested in said lands are hereby notified that they are required by law to appear within four (4) weeks and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes, together with the payment of interest, penalty, and costs allowed by law.

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Clerk of Said Court."

(d) TRIAL DATE — SUIT BY BONDHOLDER. (1)(A) The suit shall stand for trial at the first term of court after the complaint may be filed, if four (4) weeks shall expire either before the first day of the term, or during the term of court to which the suits are brought respectively, unless a continuance is granted for good cause shown, within the discretion of the court.

(B) The continuance, for good cause shown, may be granted as to a part of the lands or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted.

(2) In case the commissioners shall fail to commence suit within sixty (60) days after the taxes become delinquent, the holder of any bond issued by the district or any trustee on behalf of the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in the suit brought by the bondholder or trustee shall in all respects be governed by the provisions applicable to suits by the commissioners.

(e) TRIAL PROCEDURE. (1) Suits for collection shall be conducted in the name of the property owners' improvement district, and in accordance with the practice and proceedings of chancery courts in this state, except as otherwise provided in this chapter, and neither attorneys ad litem, nor guardians ad litem, nor any of the provisions of § 16-65-403 [repealed] shall be required.

(2) The suits may be disposed of on oral testimony, as in ordinary suits at law.

(3) The law shall be liberally construed to give to the assessment and tax lists the effect of bona fide mortgage for a valuable consideration, and a first lien upon the lands, as against all persons having an interest therein.

(4) In such suits, it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of the taxes, setting forth the description of the lands proceeding against, and the amount chargeable to each tract, with prayer for foreclosure.

(5) No informality or irregularity in holding any of the meetings provided for herein, in valuation, in assessment of the lands, or in the name of the owners, or the number of acres therein shall be a valid defense to the action.

(f) SALE OF THE LAND. (1)(A) In all cases where notice has been properly given and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint.

(B)(i) The court shall direct the commissioner to sell the lands described in the complaint at the courthouse door of the county wherein the decree is entered, at public outcry, to the highest and best bidder, for cash in hand, after having first advertised the sale weekly for two (2) weeks, consecutively, in some newspaper having a general circulation in the county.

(ii) The advertisement may include all the lands described in the decree.

(2) If all the lands are not sold on the day as advertised, the sale shall continue from day to day until completed.

(3) The commissioners shall by proper deeds convey to the purchaser the lands so sold. The title to the lands shall thereupon become vested in the purchaser as against all others whomsoever.

(g)(1) In any case where the lands are offered for sale by the commissioner, as provided by this subchapter, and the sum of the delinquent tax due, together with interest, cost, and penalty, is not bid for the lands, the commissioner shall bid the lands off in the name of the board of directors of the property improvement district, bidding therefore the whole amount due as aforesaid.

(2)(A) The commissioner shall execute his deed conveying the land to the property owners' improvement district board.

(B) No report of sale other than the execution of the deed and its submission to the court for approval and no confirmation other than approval of the deed need be made in any such case and a deed to the



land executed by the commissioner, approved by the court and recorded, shall be conclusively presumed to be in consideration of the total amount rightfully due to the district whether that amount is stated or whether it is stated correctly or incorrectly in the deed.

(3) The deeds, together with other deeds as are duly executed in conformity to the provisions of this subchapter and recorded, shall be received as evidence in all cases showing an indefeasible title in the district, unassailable in either law or equity.

(h)(1) No provision contained herein shall relieve any purchasers of lands, excluding the district, from the obligation to pay all future taxes levied under the terms of this chapter following the enforcement of these foreclosure proceedings.

(2) The obligation to pay all future taxes shall also extend to any purchaser of lands who purchases such lands from the district following the district's obtaining of the land pursuant to subsection (g) of this section.

(i) **ATTORNEY'S FEES.** In all suits brought for collection of delinquent taxes under this subchapter, a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the cost.

(j) **REDEMPTION.** (1) At any time within thirty (30) days after the rendition of the final decree of the chancery court provided for in this subchapter, the owner of the lands may file his petition in the court rendering the decree, alleging the payment of taxes on the land for the year for which they were sold and payment of all costs associated with the enforcement of the provisions of this chapter, including attorney's fees.

(2) Upon the establishment of that fact, the court shall vacate and set aside that decree, provided that any landowner shall have the right within thirty (30) days after the day upon which lands are offered for sale to redeem any and all lands sold at the sale.

**History.** Acts 1983, No. 613, § 14; A.S.A. 1947, § 20-2414; Acts 1997, No. 1338, § 1.

**A.C.R.C. Notes.** The 1997 amendment to this section contains grammatical or stylistic errors. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the language.

The punctuation in the 1997 amendment to this section is incorrect or does

not conform to Code style. Pursuant to § 1-2-303, the Arkansas Code Revision Commission is unable to correct the punctuation.

**Amendments.** The 1997 amendment substituted "levied by the board under this chapter" for "levied by a board in pursuance to this chapter" in (b)(1); rewrote (b)(2); added (b)(3); and added (c)-(j).

## 14-93-124. Negotiable notes, bonds, or evidences of debt.

(a)(1) In order to meet preliminary expenses and to finance the cost of the improvements to be accomplished with cost incidental to the improvements and to the issuance of the bonds, the board may issue negotiable notes or bonds of the district and may pledge and mortgage all assessments of benefits to the district and all or any part of the

profits of the district derived from its operation of any improvements of the district to the payment of the notes and bonds.

(2) The board may also issue to the contractors who do the work negotiable evidences of debt to bear interest at the rates prescribed by the board and secure them in the same manner.

(3) As for the security for the payment of any such indebtedness, the members of the board may, by resolution, establish the rates for use of the improvements to be collected from the users of such improvements and may mortgage any or all of its property, including improvements.

(b)(1) Bonds and notes issued under the authority of this chapter shall bear interest at such rate or rates, shall mature at such time or times, shall be payable, as to principal, premium, if any, and interest, at such places, within or without the State of Arkansas, shall be in such form, whether bearer or registered, shall be subject to such exchange privileges, and shall have such other details as may be set forth in the resolution of the board authorizing their issuance.

(2) The resolution may provide for the execution and delivery of a trust indenture or like instrument by the board securing the bonds and for the execution and delivery of other writings pertaining thereto.

(3) The bonds, and coupons, if any, may be executed by the manual or facsimile signatures of the members of the board.

**History.** Acts 1983, No. 613, § 15;  
1985, No. 296, § 5; A.S.A. 1947, § 20-2415.

#### **14-93-125. Bonds — Tax exemption.**

Bonds, and the interest thereon, shall be exempt from all state, county, and municipal taxes, including income, property, and inheritance taxes.

**History.** Acts 1983, No. 613, § 15;  
1985, No. 296, § 5; A.S.A. 1947, § 20-2415.

#### **14-93-126. Payment of bonds and interest.**

(a)(1) All bonds issued under the terms of this chapter shall be secured by a lien on all real property in the district.

(2)(A) The board shall see to it that a tax is levied annually and collected under the provisions of this chapter, so long as it may be necessary to pay any bond issued or obligation contracted under its authority.

(B) The making of an assessment or levy and collection may be enforced by mandamus.

(b)(1)(A) If any bond, or interest thereon, is not paid within thirty (30) days after its maturity, it shall be the duty of any court of competent jurisdiction, on application of any holder of the bond or interest coupon so overdue, to appoint a receiver to collect the taxes and an assessor to reassess the benefits, if necessary.

(B) The proceeds of the taxes and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the board which are then due and payable.

(2)(A) The receiver may be directed, by suit, to foreclose the lien of the taxes on the real property.

(B) Suits brought by the receiver shall be conducted in all matters as are suits by the board as provided in this chapter and with like effect, and the decree and deeds therein shall have the same presumption in their favor.

(c) When all the sums have been paid, the receiver shall be discharged and the affairs of the district conducted by the board as provided in this chapter.

**History.** Acts 1983, No. 613, § 18;  
A.S.A. 1947, § 20-2418.

### **14-93-127. Dissolution of district.**

(a)(1) After all bonds, notes, or other evidences of indebtedness, plus all interest thereon, shall have been paid in full, then a district may, by unanimous vote of the board, be dissolved and all future levies and assessments cancelled, the board relieved from further duties, and the surplus funds of the district distributed in accordance with the procedures set forth in subsection (b) of this section if title to and control of the facilities constructed by the district have been taken over or assumed by any political subdivision, municipal utility commission or agency, or any regulated public utility.

(2) The districts are authorized, at the discretion of the board, to enter into repair and maintenance agreements or contracts and to expend funds of the districts for these purposes.

(b)(1) In the event the board votes to dissolve the district under subsection (a) of this section, the board shall convert all assets into cash and shall first pay from such surplus funds all debts of the district, including any reasonable legal and other expenses incurred in connection with the dissolution.

(2)(A) The board then shall refund all remaining funds of the district, pro rata, to the property owners who hold title to the property in the district at the time the refund is made.

(B)(i) The pro rata refund to the property owners shall be made on the basis of the most recent assessment or reassessment of benefits on the parcels of property prior to dissolution and shall be in the same proportion that the assessed benefits of each individual parcel of property bears to the total of the assessed benefits of all the property in the district.

(ii) No property owner whose property is delinquent in any sum for district assessments, penalties, or interest, at the time the refund is made, shall be counted in calculating the pro rata distribution, or receive any portion of the refund.

(C) Within ninety (90) days after the distribution of the surplus funds has been completed, the board shall file a copy of the resolution



of dissolution and a financial statement of the district, verified by all its members, in the office of the county clerk in the county in which the district is located.

**History.** Acts 1983, No. 613, § 17;  
A.S.A. 1947, § 20-2417.

#### **14-93-128. Lien for preliminary expenses.**

(a) In case, for any reason, the improvement contemplated by any district organized under this chapter is not made, the preliminary expense shall be a first lien upon all the land in the district and shall be paid by a levy of a tax thereon.

(b) The levy shall be made by the chancery court of the county and shall be collected by a receiver to be appointed by the court.

**History.** Acts 1983, No. 613, § 20;  
A.S.A. 1947, § 20-2420.

#### **14-93-129. Continued existence of district.**

If the petition for formation of the district provides therefor or the owners of real property in the district agree thereto, then a district shall not cease to exist upon the acquiring, construction, or completion of the improvement, but shall continue to exist for the purpose of preserving, maintaining, and operating the improvement, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in this chapter. To this end, the board may, from time to time, make such additional levies based upon the assessment of benefits as may be necessary for these purposes. However, the amount of the total levies shall not exceed the assessed benefits and interest thereon.

**History.** Acts 1983, No. 613, § 17;  
A.S.A. 1947, § 20-2417.

#### **14-93-130. Systems turned over to municipality.**

(a) In those cases where improvement districts have been organized under this chapter or any consolidation of districts organized under this chapter with one another or with suburban or municipal improvement districts, either for furnishing of water or sewer services, or both, and all or any part thereof lies outside a municipality within the class affected by this chapter which desires to operate them as a municipal waterworks or a municipal sewer system, the boards of these districts, in order to secure more adequate service for the inhabitants within the districts, shall have the authority to turn over to the municipality the operation and maintenance of the systems.

(b)(1) The municipality may issue revenue bonds and fix the rates for the services and use the net revenues from the operation to pay the

principal and interest and paying charges of its revenue bonds for payment and discharge of the outstanding bonds of the district.

(2) If the net revenues are not sufficient to prevent a default in the bonds or interest, a tax sufficient to produce enough revenue to cure the default shall be levied on the assessments of benefits in the district and nothing in this section shall impair the rights of the holders of the outstanding bonds to demand and receive sufficient annual collections on the assessments of benefits to meet interest and principal payments as they become due.

**History.** Acts 1985, No. 296, § 7;  
A.S.A. 1947, § 20-2426.

### **14-93-131. Consolidated systems authorized.**

(a) Where there are contiguous or adjacent districts organized under this chapter or under the suburban improvement district laws or the municipal improvement district laws for either water or sewer services, or both, it shall be permissible for all or any two (2) or more of these districts, whether organized under this chapter, the suburban improvement district laws, the municipal improvement district laws, or any combination thereof, to enter into a contract with each other for the joint operation, maintenance, improvement, enlargement, and betterment of their respective systems or of the consolidated system, to be paid for by charges for the services.

(b) Any such district which has paid its outstanding bonded indebtedness but which has not been turned over to the municipality for operation, may join in contracts for joint operation, and any facilities constructed by any districts outside their boundaries shall be included in the consolidated systems.

(c) These consolidated systems may borrow money to pay and discharge any outstanding bond issues and indebtedness of the districts joining in the consolidations and may borrow money also for improvement, enlargement, and betterment of the facilities of the consolidated systems.

(d) To accomplish these purposes, consolidated systems may issue negotiable bonds or notes evidencing the money so borrowed, to be secured solely by a pledge of the net revenues derived from the operation of the facilities, to bear interest at such rate or rates as prescribed by the boards of the district, and to mature at such time and places as the board shall decide best, and to be issued with such terms of payment, call provisions, and interest rates as the board shall deem to be in the best interest of the inhabitants of the consolidated district.

**History.** Acts 1985, No. 296, § 8;  
A.S.A. 1947, § 20-2427.

**14-93-132. Connections outside district boundaries.**

(a) All districts organized pursuant to the provisions of this chapter for the purposes of constructing waterworks, sewers, gas pipelines, or telephone lines shall have the authority to permit lands outside the boundaries of the district to connect to these improvements and transmission lines serving the lands with water, sewer, gas, and telephone improvements of the district and to make a charge for this privilege.

(b)(1) The commissioners of the district shall have the right to consent to or refuse to allow these connections within their discretion.

(2)(A) These connections shall be made on such terms as the commissioners may dictate. However, no lands outside the district shall be permitted to connect with the improvements of the district except on payment to the district of a sum equal to not less than the charge made against similarly benefited lands within the district.

(B) In case connections have theretofore been made without the payment of a charge for the connection, the district may refuse to allow service to the lands until permission for the connection is granted and the charge for the service is paid to the district.

**History.** Acts 1985, No. 296, § 6;  
A.S.A. 1947, § 20-2425.

**14-93-133. Annexation of lands outside district boundaries.**

(a)(1) All districts organized under this chapter shall have the authority to permit lands outside the boundaries of the district to be annexed to the district.

(2) Annexation shall be permissible only for the purpose of providing improvements to the property to be annexed for purposes similar to the purposes for which the district was formed or for which the district currently exists.

(b)(1) When persons claiming to constitute all of the owners of territory contiguous to any such district desire that the territory be annexed to the district, they may present their petition describing the territory to be annexed to the clerk of the county court.

(2) The petition shall be accompanied by a resolution of the board of the existing district approving the annexation.

(3) The county court shall then direct the clerk to publish for two (2) consecutive weeks, in some newspaper having general circulation in each county in which the district and the territory proposed to be annexed is located, a notice calling upon the owners in the district and the territory proposed to be annexed to appear before the county court on the date and time and at the place named in the notice and show cause for or against the annexation.

(c)(1) On the day named in the notice, the county court shall hear all persons who desire to be heard on the following questions:

(A) Whether the territory to be annexed to the district lies within the jurisdiction of the county court;



(B) Whether all of the owners of real property in the territory sought to be annexed have signed the petition; and

(C) Whether a majority of the board of the district has approved the annexation by resolution of the board.

(2) The findings of the county court shall have all the force and effect of a judgment, and shall be conclusive, unless, within thirty (30) days thereafter, suit is brought in the chancery court to review it.

(d)(1) The finding of the county court shall be expressed as a judgment in case it is in favor of the petitioners.

(2) In that event, the territory sought to be annexed shall become a part of the district, and the improvements petitioned for shall be made by the commissioners.

(3) The commissioners shall make the assessment of benefits and levy the tax for the improvements on the territory annexed under the provision of this section as if the territory were included in the original district.

**History.** Acts 1987, No. 787, § 2.

## CHAPTER 94

### MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT LAW

#### SECTION.

- 14-94-101. Title.
- 14-94-102. Legislative intent.
- 14-94-103. Definitions.
- 14-94-104. Construction.
- 14-94-105. Petition to form district.
- 14-94-106. Hearing on petition and determination.
- 14-94-107. Board of commissioners generally.
- 14-94-108. Removal of board members.
- 14-94-109. Planning by board.
- 14-94-110. Powers of districts generally.
- 14-94-111. Corporate powers.
- 14-94-112. Right of eminent domain.
- 14-94-113. Sale of land.
- 14-94-114. Priority of cases.
- 14-94-115. Assessment of benefits and damages.
- 14-94-116. Filing and notice of assessment — Hearing.

#### SECTION.

- 14-94-117. Reassessment.
- 14-94-118. Levy of tax.
- 14-94-119. Interest on assessment.
- 14-94-120. Extension and collection of taxes.
- 14-94-121. Subsequent levies.
- 14-94-122. Payment of taxes — Enforcement.
- 14-94-123. Negotiable notes, bonds, or evidence of debt.
- 14-94-124. Tax exemption.
- 14-94-125. Payment of bonds and interest.
- 14-94-126. Dissolution of district.
- 14-94-127. Lien for preliminary expenses.
- 14-94-128. Continued existence of district.

**Publisher's Notes.** Acts 1987, No. 113, § 25, provided that the provisions of this act shall not repeal but shall be cumulative and supplemental to all other laws now in effect concerning municipal improvement districts.

**Cross References.** Property owners' improvement districts, § 14-93-101 et seq.

**Effective Dates.** Acts 1987, No. 113, § 27: Mar. 4, 1987. Emergency clause provided: "It has been found and it is hereby

declared that the laws of Arkansas pertaining to municipal improvement districts do not at this time provide for the formation and operation of such District on the basis of the consent of all the owners of real property within such District and that this inadequacy is causing the delay of the accomplishment of projects which are greatly needed and in the public interest. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval."

Acts 1989, No. 276, § 8: Mar. 1, 1989. Emergency clause provided: "It has been found and it is hereby declared that municipal property owners improvement districts may be formed only upon the petition of all owners of real property located in the territory included in such districts, that it is not feasible in all such districts to require that all commissioners thereof be owners of real property therein, that such a requirement exclude from service as commissioners persons who are qualified so to serve and who would be chosen so to serve by all the owners of real property therein, that the present law impairs the formation and operation of districts which are essential to the orderly and proper growth of municipalities, some of which districts must be and have been formed to accomplish improvements which are urgently needed. Therefore, an emergency is declared and this Act, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval and shall apply to municipal property owners districts now being formed or already formed, provided that all owners of real property in such districts shall have petitioned for or agreed to rights and powers as set forth in this Act."

Acts 1991, No. 504, § 7: Mar. 13, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the impairment of the rights of owners of real property located within various improvement districts to prepay their assessments greatly in-

fringes on their rights to own, manage, and enjoy their real property and that it must be made unimpeachably clear that these owners of real property do have and should have the right to prepay these assessments and to be released from the liens upon the prepayment of these assessments. Therefore, in order to clarify and extend rights of owners of real property located within various improvement districts, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 927, § 5: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the foreclosure procedure for tax delinquent lands in a municipal property owners' improvement district is unreasonable in length of time and greatly infringes on the rights of bondholders or other interested parties to foreclose upon the land securing their bonds. Therefore, in order to shorten the time in which a bondholder or other interested party may foreclose upon tax delinquent lands within a municipal property owners' improvement district, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 819, § 5: Apr. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the ambiguity in existing laws with respect to the formation of municipal property owners improvement districts for lands lying in more than one municipality inhibits the formation of such districts for the construction of projects urgently needed. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

## RESEARCH REFERENCES

**UALR L.J.** Goldner, A Call for Reform of Arkansas Municipal Law, 15 UALR L.J. 175.

### 14-94-101. Title.

This chapter may be known and cited as the “Municipal Property Owner’s Improvement District Law”.

**History.** Acts 1987, No. 113, § 1.

### 14-94-102. Legislative intent.

It is the intent and purpose of this chapter to authorize the formation of improvement districts by the unanimous approval of the owners of real property located in the territory to be included in the district, provided that all the real property to be located in the district is owned by twenty-five (25) or fewer persons.

**History.** Acts 1987, No. 113, § 1; 1993, No. 819, § 1.

**Amendments.** The 1993 amendment made no change in this section.

### 14-94-103. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) “Board” means any board of commissioners appointed pursuant to this subchapter;
- (2) “Clerk” means the clerk or recorder of a municipality;
- (3) “District” means any improvement district formed under the provisions of this chapter;
- (4) “Facilities” means any properties, real, personal, or mixed, tangible or intangible;
- (5) “Governing body” means any city council, town council, board of directors, or like body having legislative powers for any municipality;
- (6) “Improvement” or “improvements” means any lands, structures, improvements, fixtures, and appurtenant equipment acquired, constructed, improved, or equipped by a district;
- (7) “Municipality” means any city or incorporated town of the State of Arkansas;
- (8) “Nearby municipality” means any municipality located within ten (10) miles of any boundary of a district;
- (9) “Person” means an individual, corporation, partnership, association, firm, or other entity recognized by law as having capacity to own real property in the State of Arkansas;
- (10) “Real property” shall be construed to embrace all property subject to assessment for the purposes of this chapter.

**History.** Acts 1987, No. 113, §§ 2, 7.



**14-94-104. Construction.**

The provisions of this chapter shall be liberally construed to accomplish the purposes of this chapter, and this chapter shall be the sole authority necessary to accomplish its purposes. To this end, it shall not be necessary to comply with the requirements of other laws including, without limitation, those pertaining to notice, consent, and like requirements in acting pursuant to this chapter to accomplish its purposes.

**History.** Acts 1987, No. 113, § 24.

**14-94-105. Petition to form district.**

(a) Upon the petition of all the owners of the record title as reflected by the deed records in the office of the circuit clerk and ex officio recorder of the pertinent county, all the real property of which territory is owned by twenty-five (25) or fewer persons, it shall be the duty of the governing body to:

(1) Lay off into an improvement district the territory described in the petition for the purpose of purchasing, accepting as a gift, constructing, or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways, including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one (1) of those purposes; and

(2)(A) Name as commissioners of the district the three (3) individuals whose names appear in the petition if the petition contains those names and, if not, then three (3) individuals of integrity and good business ability who own real property in the district, or are creditors of the district, or live in the district.

(B) In the event that a property owner or creditor is a corporation, partnership, trust, or other legal entity, any officer, director, trustee, employee, or other designated representative of the entity may be named and appointed as a commissioner.

(b) All the districts shall be numbered consecutively and shall receive names selected by the governing body. If the governing body does not act promptly in complying with the terms of this section, or of any other section of this chapter essential to the creation and operation of the district, it may be compelled to do so by mandamus.

(c) Any number of petitions may be circulated, and identical petitions with additional names may be filed at any time until the governing body acts.

(d) The formation and creation of such districts is authorized, in whole or in part, outside any municipality.

(e) In the event that lands to be included in a district lie in more than one (1) municipality:

(1) The municipality in which lies the largest portion of the lands, exclusive of lands which do not lie in any municipality, shall have

jurisdiction to create such district and to conduct all other municipal proceedings relating thereto and to the business and affairs thereof, which municipality is referred to hereinbelow as the "creating municipality".

(2) No portion of a municipality shall be included in such district unless it shall be found by the creating municipality that the owners of real property lying within such municipality and within the district shall have petitioned for creation of such district.

(3) Notice of the filing of the petition for creation of such district shall be given by first class mail to the mayor of each such municipality by the clerk or recorder of the creating municipality, and each such municipality may, at any time within fifteen (15) days after the deposit of such notice in the mails, unless such notice shall be waived by resolution of the governing body of such municipality, file with the clerk or recorder of the creating municipality a certified copy of a resolution of its governing body finding that the proposed improvements do not harmonize with the community facilities plans of such municipality or would diminish vehicular or pedestrian traffic in such municipality.

(4) In the event of the filing of the resolution described in subdivision (e)(3) of this section, the governing body of the creating municipality shall reject the petition for creation of such district.

**History.** Acts 1987, No. 113, § 3; 1989, No. 276, § 1; 1993, No. 819, § 1; 1995, No. 1127, § 1.

**Amendments.** The 1993 amendment added (d) and (e).

The 1995 amendment made a stylistic change in (a)(1); added the language beginning "who own real property" at the end of (a)(2)(A); and added (a)(2)(B).

#### **14-94-106. Hearing on petition and determination.**

(a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.

(2) The mayor shall thereupon set a date and time, not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.

(b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

(2) If the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners as named in the petition if commissioners are named in the petition and are property owners in or creditors of the district, or as is otherwise provided from among such property owners or creditors.

(3) The petition shall state the specific purposes for which the district is to be formed, and the ordinance establishing the district shall give it a name which shall be descriptive of the purpose. It shall also

receive a number to prevent its being confused with other districts for similar purposes.

(c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

(d) The findings of the governing body shall be conclusive unless attacked by a suit in the chancery court of the county in which the municipality is located, brought within thirty (30) days after the publication.

**History.** Acts 1987, No. 113, § 4; 1989, No. 276, § 2; 1995, No. 1127, § 2.

**Amendments.** The 1995 amendment redesignated former (b)(2)(A) and (B) as present (b)(2) and (3); in (b)(2), inserted

“as” preceding “named” and added the language beginning “and are property owners”; and deleted “which suit” preceding “brought” in (d).

### **14-94-107. Board of commissioners generally.**

(a)(1)(A) Within thirty (30) days after their appointment, the commissioners shall take and file with the clerk their oath of office, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to discharge faithfully their duties as commissioners, and to not be interested, directly or indirectly, in any contract let by the board except upon the approval of all the owners of real property located in the district.

(B) Any commissioner failing to file the oath within this period shall be deemed to have declined the office, and the governing body shall appoint some property owner as his successor, who shall qualify in like manner within a like time.

(2)(A) In case of a vacancy on the board after the commissioners have organized, except as set forth in § 14-94-108, the remaining commissioners shall select some property owner in the district or creditors of the district as a successor; provided, however, if all improvements in the district have been completed, then the governing body shall select the successor.

(B) The person so selected shall qualify by taking the oath of office as prescribed for the original commissioners.

(b)(1)(A) The board shall organize by electing one (1) of its members as chairman and another as secretary.

(B) It may also employ such agents, servants, engineers, and attorneys as it deems best and fix their compensation and the compensation of the secretary.

(2) The board shall also select some solvent bank or trust company as the depository of its funds.

(c) In addition to and not by way of limitation of the above powers, the board shall have the power to:

(1) Make and execute all contracts, leases, conveyances, and other instruments of the district;

(2) Join with any county, municipality, improvement district, or other political subdivision or government agency, local, state, or federal,



in the acquisition, construction, maintenance, operation, and financing of any of the improvements authorized by this chapter or as to the performance of any of its functions;

(3) Establish rules and regulations for the transaction of the district's business and for the services, use, and right to use of its facilities or services, or both, or to effectuate any purpose of this chapter;

(4) Do all things incidental to the exercise of the express powers granted by this chapter; and

(5) Perform all acts useful to carry out the purposes of this chapter, unlimited by any express provision hereof.

(d) No member of the board shall be liable for any damages unless it shall be made to appear that he acted with a corrupt intent.

**History.** Acts 1987, No. 113, §§ 5, 16; inserted "as" in (a)(1)(B); and rewrote 1995, No. 1127, § 3. (a)(2)(A).

**Amendments.** The 1995 amendment

#### **14-94-108. Removal of board members.**

(a) When the owners of two-thirds ( $\frac{2}{3}$ ) in assessed value of the real property located within any district shall sign a petition stating that the petitioners believe it to be in the best interest of the district that the board, or any member thereof, be removed and shall file the petition with the governing body, the governing body shall set a date for a hearing on the petition and shall give notice of the hearing by one (1) publication in a newspaper of general circulation in the district at least ten (10) days before the date of the hearing.

(b)(1) The purpose of the hearing shall be to determine the sufficiency of the petition.

(2) Any property owner of the district may appear and present evidence either in support of or against the sufficiency of the petition.

(c) If, after hearing, based upon the evidence presented, the governing body shall determine that the petition is signed by at least two-thirds ( $\frac{2}{3}$ ) in assessed value of the real property owners in the district, the governing body shall immediately adopt a resolution removing the member of the board in accordance with the petition and appoint some property owner in the district or creditor of the district as a successor to fill the vacancy created by his removal.

(d) No member of the board shall be liable for any damages unless he or she shall have acted with a corrupt intent.

**History.** Acts 1987, No. 113, § 23; inserted "some property owner in the district or creditor of the district as" in (c). 1989, No. 276, § 3; 1995, No. 1127, § 4.

**Amendments.** The 1995 amendment

**14-94-109. Planning by board.**

(a) The board shall form plans relative to the acceptance, purchase, or construction of the improvement.

(b) To that end, the board may employ such engineers, attorneys, and other assistants as it may find necessary and shall file copies of all pertinent reports and actions of the board with the clerk.

**History.** Acts 1987, No. 113, § 7.

**14-94-110. Powers of districts generally.**

(a) Any district, in furtherance of any of the purposes set forth in § 14-94-105, shall have the authority to hire managers and other employees and to pay their salaries incident to the operation and maintenance of any of the improvements authorized by this chapter. It shall also have the authority to acquire and purchase equipment and machinery incident to the operation and maintenance of these improvements and shall be further authorized to do any and all other acts which shall be deemed necessary in order to purchase, construct, accept as a gift, operate, and maintain any and all improvements authorized by this chapter.

(b) Any district shall have the power to sell or lease any improvements owned by it to any nearby municipality or district or other improvement district within the nearby municipality serving on behalf of the property owners of the district or to any other person. The district may make contracts with any person, or it may operate any improvement and may connect any improvement with the improvements, systems, and transmission lines of any nearby municipality or other district or improvement district and, with respect to sewers, may carry its sewers to any proper outlet within or without the district.

(c) Any district may accept as a gift any or all of the improvements and facilities authorized in this chapter upon the assumption of the maintenance and operation of the improvements and shall have the authority to assess and collect benefits as provided in this chapter, in order to provide the revenue for the costs of the maintenance and operation.

**History.** Acts 1987, No. 113, § 6.

**14-94-111. Corporate powers.**

Each district shall be a body corporate with power to sue and to be sued on its contracts, and it shall have a corporate seal.

**History.** Acts 1987, No. 113, § 5.

**14-94-112. Right of eminent domain.**

(a) All districts organized under this chapter shall have the right of eminent domain in order that they may carry out the purposes of their creation.

(b) This right shall be exercised in the same manner as in the case of railroad, telegraph, and telephone companies, but without the necessity of making a deposit of money before entering into possession of the property condemned.

(c) Nothing in this chapter shall be construed to authorize any property owner improvement district to issue or sell revenue bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility generating plant, transmission or distribution system owned or operated by a regulated public utility.

**History.** Acts 1987, No. 113, § 21;  
1989, No. 276, § 4.

**14-94-113. Sale of land.**

Any property that may be acquired by any district organized under this chapter may be sold by the board of the district for the price and on the terms it deems best.

**History.** Acts 1987, No. 113, § 22.

**14-94-114. Priority of cases.**

(a) All cases involving the validity of districts or the assessment of benefits and all suits to foreclose the lien or taxes shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment.

(b) All appeals therefrom must be taken and perfected within thirty (30) days after the order or decree.

**History.** Acts 1987, No. 113, § 19.

**14-94-115. Assessment of benefits and damages.**

(a)(1) In the event that the board shall have voted to accept any offer of gift, or shall have voted to purchase any improvement, or shall have voted to construct any improvement or any facilities for the improvement, it shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the district as a result of the improvement.

(2) The assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the district by reason of the improvement.

(b)(1) The assessor shall proceed to assess the real property within the district, and he shall inscribe in a book each tract of real property and shall place in one (1) column his valuation of each tract or parcel of



real property prior to the improvement, which column may be marked "Assessed Value of Real Property Prior to Improvement", and in another column he shall place what he thinks will be the value of each tract or parcel of real property after the improvement, which column may be marked "Assessed Value of Real Property After Improvement".

(2)(A)(i) If the assessed value of real property after improvement is greater than the assessed value of real property before improvement, as assessed by the assessor for the district, the difference between the two (2) shall be the assessed benefits that will accrue to each tract by reason of the improvement.

(ii) If the assessed value of real property as assessed by the assessor of the district after the improvement is less than the assessed value of real property before the improvement, the difference between the two (2) shall be the assessed damages that will accrue to the particular parcel or tract of real property by reason of the improvement.

(B) The assessor shall enter the assessment of benefits or damages opposite the description of each piece of property in appropriate columns, one (1) of which may be marked "Assessed Benefits", and the other may be marked "Assessed Damages". In another column the assessor shall show the estimate of the probable cost to the property owner, which may be marked "Estimated Cost".

(c)(1) The assessment shall embrace not merely the lands but all railroads, tramroads, telegraph and telephone lines, pipelines, and other improvements on land that will be benefited by the acquiring or making of the improvement.

(2) No assessment shall apply against any pipelines or other improvements which are owned by any municipality, county, school district, or improvement district.

(d)(1) The assessor shall place opposite each tract the name of the supposed owner as indicated by the deed records, but a mistake in name shall not vitiate the assessment.

(2)(A) The assessor shall also assess all damages that will accrue to any property owner by reason of the improvement, including all injury to real property taken or damaged.

(B) Where the assessor returns no damages to any tract of real property, it shall be deemed a finding by him that no damages will be sustained.

(e) The assessor shall hold his office at the pleasure of the board, which can fill any vacancy in the position of assessor.

**History.** Acts 1987, No. 113, § 7.

**14-94-116. Filing and notice of assessment — Hearing.**

- (a)(1) The assessment shall be filed with the clerk.
- (2)(A) The secretary of the board shall thereupon give notice of its filing by two (2) publications in a newspaper having a general circulation in the municipality in which the district lies, with the first publication to be not fewer than seven (7) days prior to the date set for the hearing.

(B) This notice may be in the following form:  
“Notice is hereby given that the assessment of benefits and damages of .....District Number .....has been filed in the office of the City Clerk (or Town Recorder) of ....., where it is open to inspection. All persons wishing to be heard on the assessment will be heard by the commissioners and the assessor of the District between the hours of 10 a.m. and 4 p.m., at ....., in the City of ....., Arkansas, on the .....day of ....., 19 .....  
.....  
Secretary”

(b) On the day named in the notice, it shall be the duty of the commissioners and assessors as a board of equalization to meet together at the place named to hear all complaints against the assessment, and to equalize and adjust them. Their determination shall be final, unless suit is brought in the chancery court in which the municipality is located within thirty (30) days to review it.

**History.** Acts 1987, No. 113, § 8.

**14-94-117. Reassessment.**

- (a) The board may, not more often than one (1) time a year, require the assessor to reassess the benefits in the district. However, in the event the district shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished.
- (b) The reassessment shall be made, advertised, and equalized in the same manner as provided in this subchapter for making the original assessment.

**History.** Acts 1987, No. 113, § 9.

**14-94-118. Levy of tax.**

- (a)(1) At the same time that the assessment of benefits is equalized or at any time thereafter, the board shall enter upon its records an order, which shall have all the force of a judgment, providing that there is levied upon the real property of the district a tax sufficient to pay the estimated cost of the improvement with ten percent (10%) added for unforeseen contingencies.
- (2) The tax is to be paid by the real property owners in the district in the proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, as provided in the order.

(b) The tax so levied shall be a lien upon all the real property in the district from the time it is levied, shall be entitled to preference over all demands, executions, encumbrances, or liens whenever created, and shall continue until the assessment, with any penalty costs that may accrue thereon, shall have been paid. Provided, however, with the prior written approval of the board, the county clerk shall release from the lien for the assessment and tax any lot, block, or tract with respect to which the assessment and tax shall have been paid or prepaid.

(c)(1) Promptly after entry of an order levying the tax, the board shall publish at least one (1) time in some newspaper having general circulation in the municipality a notice setting forth the order of levy and warning all persons affected by it that the order shall become final unless suit is brought to contest the order within thirty (30) days of the date of first publication of the notice; and

(2) No property owner shall be barred from contest of the levy within the thirty-days' publication period.

(d)(1) The remedy against such levy of taxes shall be by suit in chancery.

(2) The suit must be brought within thirty (30) days from the time of notice that the levy was made, and, on the appeal, the presumption shall be in favor of the legality of the tax.

**History.** Acts 1987, No. 113, § 10;  
1991, No. 504, § 3.

#### **14-94-119. Interest on assessment.**

The assessment of the benefits shall bear interest at a rate equal to the lesser of the maximum rate permitted by law or the rate of ten percent (10%) per annum from the time it is equalized, but the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

**History.** Acts 1987, No. 113, § 11.

#### **14-94-120. Extension and collection of taxes.**

(a)(1) When the board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set forth the amount in the assessment book opposite each benefit assessed in a column marked "Annual Collection". The assessor shall file a certified copy of the completed assessment book with the county clerk.

(2)(A) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted.

(B) For his or her services, he or she shall receive a commission of one and one-half percent (1½%) of the amount so extended.



(b)(1)(A)(i) It shall then be the duty of the collector of the county to collect each year the taxes extended upon the tax books along with the other taxes until the entire levy is exhausted.

(ii) For his or her services in making the collections, the collector shall receive a commission of one and one-half percent (1½%).

(B) The taxes shall be paid over by the collector to the district at the same time he or she pays over the county funds.

(2) In counties operating under the unit tax ledger system, the tax collector shall receive a commission of one and one-half percent (1½%) for extending the taxes and a commission of an additional one and one-half percent (1½%) for collecting the taxes.

(c) No property owner shall be required to pay the taxes provided for in this subchapter as a prerequisite to paying his or her general taxes.

**History.** Acts 1987, No. 113, § 12.

#### **14-94-121. Subsequent levies.**

(a) If the tax first levied shall prove insufficient to pay the bonds, both the principal and interest, issued by the board on account of the improvement, as provided in this chapter, as the principal and interest on the bonds shall become due and payable, the board shall from time to time make the further levy upon the property previously assessed for a sum sufficient to complete the improvement and to pay the bonds and interest, which shall be extended and collected in the same manner as the first levy. However, the total levy shall in no case exceed the value of the benefits assessed on the property with interest.

(b) The performance of the duties set forth in this section may be enforced by mandamus.

**History.** Acts 1987, No. 113, § 13.

#### **14-94-122. Payment of taxes — Enforcement.**

(a) **PAYMENT.** All taxes levied under the terms of this chapter shall be payable in installments at the same time as county, city, and school district taxes are paid.

(b) **DELINQUENCIES.** (1) If any taxes levied by the board under this chapter are not paid at maturity, the county tax collector shall not embrace the taxes in the taxes for which he shall sell the lands, but shall report the delinquencies to the board of the district, which shall add to the amount of the tax a penalty of twenty-five percent (25%).

(2) The board shall enforce the collection by chancery proceedings in the chancery court of the county in which the lands are situated having chancery jurisdiction. The court shall give judgment against the lands for the amount of the delinquent taxes, and the penalty of twenty-five percent (25%) and interest thereon, from the end of the sixty (60) days allowed for the collection thereof, at the rate of six percent (6%) per annum, and all costs of the proceedings.

(3) The judgments shall provide for the sale of the delinquent lands for cash by a commissioner of the court, after advertisement as set out in subsection (c) of this section.

(4) Proceedings and judgment shall be in the nature of proceedings in rem.

(5)(A) It shall be immaterial that the ownership of the lands be incorrectly alleged in the proceedings.

(B) Judgment shall be enforced wholly against the lands and not against any other property or estate of the defendant.

(6) All or any part of the delinquent lands for each of the counties may be included in one (1) suit for each county, instituted for the collection of the delinquent taxes, etc., as aforesaid.

(c) NOTICE OF PROCEEDINGS FOR COLLECTION OF TAXES. Notice of the pendency of the suit shall be given by publication weekly for four (4) weeks before judgment is entered for the sale of the lands in some newspaper published in the county where the suits may be pending, which public notice may be in the following terms:

“Board of Commissioners, Municipal Property  
Owners’ Improvement District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described lands, are hereby notified that suit is pending in the Chancery Court of \_\_\_\_\_ County, Arkansas, to enforce the collection of certain municipal property owners’ improvement district taxes on the subjoined list of lands, each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to wit: .....”

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent lands, and amounts due thereon respectively as aforesaid), and said public notice may conclude in the following form:

“All persons and corporations interested in said lands are hereby notified that they are required by law to appear within four (4) weeks and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes, together with the payment of interest, penalty, and costs allowed by law.

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Clerk of Said Court.”

(d) TRIAL DATE — SUIT BY BONDHOLDER. (1)(A) The suit shall stand for trial at the first term of court after the complaint may be filed, if four (4) weeks shall expire either before the first day of the term, or during the term of court to which the suits are brought respectively, unless a continuance is granted for good cause shown, within the discretion of the court.

(B) The continuance, for good cause shown, may be granted as to a part of the lands or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted.

(2) In case the commissioners shall fail to commence suit within sixty (60) days after the taxes become delinquent, the holder of any bond issued by the district or any trustee on behalf of the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in the suit brought by the bondholder or trustee shall in all respects be governed by the provisions applicable to suits by the commissioners.

(e) TRIAL PROCEDURE. (1) Suits for collection shall be conducted in the name of the municipal property owners' improvement district, and in accordance with the practice and proceedings of chancery courts in this state, except as otherwise provided in this chapter, and neither attorneys ad litem, nor guardians ad litem, nor any of the provisions of § 16-65-403 [repealed] shall be required.

(2) The suits may be disposed of on oral testimony, as in ordinary suits at law.

(3) This law shall be liberally construed to give to the assessment and tax lists the effect of bona fide mortgage for a valuable consideration, and a first lien upon the lands, as against all persons having an interest therein.

(4) In such suits, it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of the taxes, setting forth the description of the lands proceeded against, and the amount chargeable to each tract, with prayer for foreclosure.

(5) No informality or irregularity in holding any of the meetings provided for herein, in valuation, in assessment of the lands, or in the name of the owners, or the number of acres therein shall be a valid defense to the action.

(f) SALE OF LAND. (1)(A) In all cases where notice has been properly given and where no answer has been filed or, if filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint.

(B)(i) The court shall direct the commissioner to sell the lands described in the complaint at the courthouse door of the county wherein the decree is entered, at public outcry, to the highest and best bidder, for cash in hand, after having first advertised the sale weekly for two (2) weeks, consecutively, in some newspaper having a general circulation in the county.

(ii) The advertisement may include all the lands described in the decree.

(2) If all the lands are not sold on the day as advertised, the sale shall continue from day to day until completed.

(3) The commissioner shall by proper deeds convey to the purchaser the lands so sold. The title to the lands shall thereupon become vested in the purchaser as against all others whomsoever.

(g)(1) In any case where the lands are offered for sale by the commissioner, as provided by this subchapter, and the sum of the delinquent tax due, together with interest, cost, and penalty, is not bid for the lands, the commissioner shall bid the lands off in the name of the



board of directors of the municipal property owners' improvement district, bidding therefor the whole amount due as aforesaid.

(2)(A) The commissioner shall execute his deed conveying the land to the municipal property owners' improvement board.

(B) No report of sale other than the execution of the deed and its submission to the court for approval and no confirmation other than approval of the deed need be made in any such case, and a deed to the land executed by the commissioner, approved by the court and recorded, shall be conclusively presumed to be in consideration of the total amount rightfully due to the district whether that amount is stated or whether it is stated correctly or incorrectly in the deed.

(3) The deeds, together with other deeds as are duly executed in conformity to the provisions of this subchapter and recorded, shall be received as evidence in all cases showing an indefeasible title in the district, unassailable in either law or equity.

(h)(A) No provision contained herein shall relieve any purchasers of lands, excluding the district, from the obligation to pay all future taxes levied under the terms of this chapter following the enforcement of these foreclosure procedures.

(B) The obligation to pay all future taxes shall also extend to any purchaser of lands who purchases such lands from the district following the district's obtaining of the land pursuant to subsection (g) of this section.

(i) **ATTORNEY'S FEES.** In all suits brought for collection of delinquent taxes under this subchapter, a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the cost.

(j) **REDEMPTION.** (1) At any time within thirty (30) days after the rendition of the final decree of the chancery court provided for in this subchapter, the owner of the lands may file his petition in the court rendering the decree, alleging the payment of taxes on the land for the year for which they were sold and payment of all costs associated with the enforcement of the provisions of this chapter, including attorney's fees.

(2) Upon the establishment of that fact, the court shall vacate and set aside that decree, provided that any landowner shall have the right within thirty (30) days after the day upon which lands are offered for sale to redeem any and all lands sold at the sale.

**History.** Acts 1987, No. 113, § 14; 1991, No. 927, § 1.

## CASE NOTES

### Property Exempt from Taxation.

Property acquired and held by an improvement district as the result of foreclosure for failure to pay improvement district assessments is not subject to

taxation. *Pulaski County v. Carriage Creek Property Owners Imp. Dist. No. 639*, 319 Ark. 12, 888 S.W.2d 652 (1994).

**Cited:** *Barker v. Frank*, 327 Ark. 589, 939 S.W.2d 837 (1997).

**14-94-123. Negotiable notes, bonds, or evidence of debt.**

(a)(1) In order to meet preliminary expenses and to finance the cost of the improvements to be accomplished, with costs incidental to them and to the issuance of the bonds, the board may issue bonds of the district and may pledge all assessments of benefits to the district and all or any part of the profits of the district derived from its operation of any improvements of the district to the payment of the bonds.

(2) The board may also issue to the contractors who do the work evidences of debt bearing interest at the rate or rates prescribed by the board and secure them in the same manner.

(3) As for the security for the payment of any indebtedness, the members of the board may, by resolution, establish the rates for use of the improvements to be collected from the users of the improvements and may mortgage any or all of its property, including improvements.

(b)(1) Bonds issued under the authority of this chapter shall:

(A) Bear interest at such rate or rates;

(B) Mature at such time or times;

(C) Be payable, as to principal, premium, if any, and interest, at such places, within or without the State of Arkansas;

(D) Be in such form, whether bearer or registered, negotiable or nonnegotiable;

(E) Be subject to such exchange privileges; and

(F) Have such other details as may be set forth in the resolution of the board authorizing their issuance.

(2) The resolution may provide for the execution and delivery of a trust indenture or like instrument by the board securing the bonds and for the execution and delivery of other writings pertaining thereto.

(3) The bonds, and coupons, if any, may be executed by the manual or facsimile signatures of the members of the board.

**History.** Acts 1987, No. 113, § 15.

**14-94-124. Tax exemption.**

The bonds, and interest on them, shall be exempt from all state, county, and municipal taxes, including income, property, and inheritance taxes.

**History.** Acts 1987, No. 113, § 15.

**14-94-125. Payment of bonds and interest.**

(a)(1) All bonds issued under the terms of this chapter shall be secured by a lien on all real property in the district.

(2) The making of assessments, levies, and collections, as authorized by this chapter, may be enforced by mandamus.

(b)(1)(A) If any bond, or interest thereon, is not paid within thirty (30) days after its maturity, it shall be the duty of the chancery court, on application of any holder of the bond or any interest coupon so

overdue, to appoint a receiver to collect the taxes aforesaid and an assessor to reassess the benefits, if necessary.

(B) The proceeds of the taxes and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the district which are then due and payable.

(2)(A) The receiver may be directed by suit to foreclose the lien of the taxes on the real property.

(B) The suits brought by the receiver shall be conducted in all matters as suits by the board as provided in this chapter and with like effect, and the decree and deeds therein shall have the same presumption in their favor.

(C) When all the sums have been paid, the receiver shall be discharged and the affairs of the district conducted by the board as provided in this chapter.

**History.** Acts 1987, No. 113, § 18.

#### **14-94-126. Dissolution of district.**

(a)(1) After all bonds or other evidences of indebtedness, plus all interest on them, shall have been paid in full, then a district may, by unanimous vote of the members of the board, be dissolved and all further levies and assessments cancelled, the members of the board relieved from further duties, and the surplus funds of the district distributed in accordance with the procedures set forth in subsection (b) of this section.

(2) The districts are authorized, at the discretion of the respective boards, to enter into repair and maintenance agreements and to expend funds of the districts for these purposes.

(b)(1) In the event that the board shall vote to dissolve a district under subsection (a) of this section, the board shall convert all assets into cash and shall first pay from the surplus funds all debts of the district, including any reasonable legal and other expenses incurred in connection with the dissolution.

(2)(A) The board shall then refund all remaining funds of the district pro rata to the property owners who hold title to the property in the district at the time the refund is made.

(B)(i) The pro rata refund to the property owners shall be made on the basis of the most recent assessment or reassessment of benefits on the parcel of property prior to dissolution and shall be in the same proportion that the assessed benefits of each individual parcel of property bears to the total of the assessed benefits of all the property in the district.

(ii) No property or owner whose property is delinquent in any sum for district assessments, penalties, or interest at the time the refund is made shall be counted in calculating the pro rata distribution or receive any portion of the refund.



(C) Within ninety (90) days after the distribution of surplus funds has been completed, the board shall file a copy of the resolution of dissolution and a financial statement of the district, verified by all members of the board, in the office of the clerk of the municipality in which the district was established.

**History.** Acts 1987, No. 113, § 17.

#### **14-94-127. Lien for preliminary expenses.**

If for any reason the improvement contemplated by any district organized under this chapter is not made, the preliminary expense shall be a first lien upon all the real property in the district and shall be paid by a levy of a tax on it. The levy shall be made by the chancery court of the county and shall be collected by a receiver to be appointed by the court.

**History.** Acts 1987, No. 113, § 20.

#### **14-94-128. Continued existence of district.**

If the petition for formation of the district provides therefor or the owners of real property in the district agree thereto, a district shall not cease to exist upon the acquiring, construction, or completion of the improvement, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvement, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in this chapter. To this end, the board may, from time to time, make such additional levies based upon the assessment of benefits as may be necessary for such purposes. However, the amount of the total levies shall not exceed the assessed benefits and interest thereon.

**History.** Acts 1987, No. 113, § 17.

## **CHAPTER 95**

### **URBAN SERVICE DISTRICT**

#### **SUBCHAPTER**

1. GENERAL PROVISIONS.
2. ESTABLISHMENT.
3. MODIFICATION OR DISSOLUTION.
4. ADMINISTRATION.
5. CAPITAL CONSTRUCTION AND IMPROVEMENTS PROGRAM.
6. ARKANSAS DEVELOPMENT FINANCE AUTHORITY.

**SUBCHAPTER 1 — GENERAL PROVISIONS**

## SECTION.

14-95-101. Intent.

14-95-102. Urban service districts generally.

## SECTION.

14-95-103. Area served.

14-95-104. Purposes of district.

14-95-105. Financing.

**14-95-101. Intent.**

The intent of this chapter is:

- (1) To enable municipalities to establish urban service districts upon petition by residents in a proposed district for the provision of services;
- (2) To provide for the management of the services;
- (3) To authorize the levying of fees for payment of the services;
- (4) To allow for the termination of water, sewer, or garbage services upon nonpayment of the fees; and
- (5) For any other similar purposes.

**History.** Acts 1995, No. 1090, § 1.

**14-95-102. Urban service districts generally.**

Urban service districts may be established, operated, combined, enlarged, reduced, or abolished, subject to the provisions of this chapter, by ordinance of the governing body of a city or town to provide one (1) or more of the services authorized to be provided by the municipal governments.

**History.** Acts 1995, No. 1090, § 2.

**14-95-103. Area served.**

(a) An urban service district may include all or any part of the jurisdictional areas of a municipality.

(b) Two (2) or more cities, or one (1) or more cities and one (1) or more towns, may create a joint service district through an interlocal agreement.

**History.** Acts 1995, No. 1090, § 2.

**14-95-104. Purposes of district.**

(a) An urban service district shall be defined as a municipal service organization established to provide one (1) or more city services or additional municipal services and financed from revenues secured from within the designated service area through the levy and collection of service charges.

(b) Districts may be created for the following purposes, all of which are found to be public purposes within the meaning of Arkansas Constitution, Amendment 65:

- (1) Emergency services, including ambulance services, civil defense services, fire prevention and protection services, and public safety and security services;
- (2) Solid waste services, including recycling services, and solid waste collection and disposal services;
- (3) Parking services and public transportation services;
- (4) Recreation services, including parks, playgrounds, bicycle paths, and recreation programs; and
- (5) Neighborhood improvement services, including, but not limited to:
  - (A) Housing maintenance and redevelopment;
  - (B) Neighborhood business district maintenance and redevelopment;
  - (C) Community facilities maintenance and redevelopment;
  - (D) Street lighting and street cleaning; and
  - (E) Weed lot and alley maintenance services.

**History.** Acts 1995, No. 1090, § 2.

**RESEARCH REFERENCES**

**Ark. L. Rev. Note,** Dolan v. City of Tigard: Paving New Bicycle Paths Through the Thickets of the Fifth Amendment's Takings Clause, 48 Ark. L. Rev. 823.

**14-95-105. Financing.**

Notwithstanding any provisions of law requiring uniform taxation within a municipality, a municipal governing body, by ordinance, may establish urban service districts and levy service charges to provide and finance any municipal service or function which a municipality is otherwise authorized to undertake.

**History.** Acts 1995, No. 1090, § 2.

**SUBCHAPTER 2 — ESTABLISHMENT**

<b>SECTION.</b>	<b>SECTION.</b>
14-95-201. Establishment of urban service districts — Procedure generally.	14-95-202. Ordinance requirements.
	14-95-203. Initiative and referendum.

**14-95-201. Establishment of urban service districts — Procedure generally.**

An urban service district may be established in the following manner:  
(1)(A) Upon petition to the governing body of a city or town signed by not less than twenty-five percent (25%) of the electors of a proposed urban service district, the governing body of a city or town may establish an urban service district by ordinance adopted after notice and public hearing.



(B) The governing body shall set a date for a public hearing and give notice of the hearing.

(C) Following the public hearing, the governing body may either:

(i) Adopt an ordinance creating the urban service district;

(ii) Refuse to act further on the matter; or

(iii) Submit the matter to the electors of the proposed district by referendum.

(2)(A) Where an ordinance is adopted establishing an urban service district, the governing body of the city or town shall, in addition to all other requirements, at a minimum, publish notice of the adoption of the ordinance.

(B) The notice shall include a statement setting out the elector's right to protest.

(C) If, within thirty (30) days of the notice, fifty percent (50%) or more of the electors residing in the proposed urban service district file a written protest, by individual letter or petition, then the ordinance creating the urban service district shall be void.

(D) If hearings on protests indicate that a geographic area desires exclusion from the proposed urban service district, the ordinance may be amended to exclude the property in that area.

(3) No service charges shall be assessed until after the thirty-day period has elapsed.

**History.** Acts 1995, No. 1090, § 3.

#### **14-95-202. Ordinance requirements.**

An ordinance to establish an urban service district shall include:

(1) The name of the proposed district;

(2) The services to be provided by the proposed district;

(3) The convenience or necessity of the proposed district;

(4) A map containing the boundaries of the proposed district;

(5) The estimated cost of services to be provided and methods of financing the proposed services;

(6) The method for administering the proposed district; and

(7) The time period for which the fee is to be levied, but in no case to exceed ten (10) years from the date of the establishment of the district, unless the fees are pledged to service a bond indebtedness, in which case the time period of the levy shall be on a parity with the maturity of the bonds.

**History.** Acts 1995, No. 1090, § 3.

#### **14-95-203. Initiative and referendum.**

All provisions of Arkansas Constitution, Amendment 7, shall apply to an ordinance establishing an urban service district.

**History.** Acts 1995, No. 1090, § 3.

**SUBCHAPTER 3 — MODIFICATION OR DISSOLUTION**

## SECTION.

14-95-301. Modification or dissolution —  
Prohibitions — Exception.14-95-302. Modification or dissolution  
generally.

## SECTION.

14-95-303. Dissolution — Combination of  
service district.

14-95-304. Voter approval.

**14-95-301. Modification or dissolution — Prohibitions — Exception.**

(a) Once an urban service district has incurred bond indebtedness, it shall not be dissolved or modified in any respect until all bonds are retired.

(b) This prohibition shall not prevent the creation of a new or additional district with boundaries larger, smaller, or coextensive with, an existing urban service district.

**History.** Acts 1995, No. 1090, § 4.

**14-95-302. Modification or dissolution generally.**

The governing body of a city or town may, by ordinance, with notice and public hearing:

(1) Decrease or terminate the type of services and associated fees that the urban service district is authorized to provide, unless fifty percent (50%) or more of the electors residing in the district protest;

(2) Enlarge the district to include adjacent land if fifty percent (50%) or more of the electors residing in the proposed addition do not protest and the advisory board or administrative board of the original district consents;

(3) Combine the urban service district with another urban service district for ease of administration, unless fifty percent (50%) or more of the electors in either district protest, but it may not combine advisory boards or administrative boards without the concurrence of each;

(4) Abolish the urban service district unless fifty percent (50%) or more of the electors in the district protest;

(5)(A) Change the method for administering the urban service district, unless fifty percent (50%) of the electors in the district protest.

(B) Provided, that existing advisory boards or administrative boards cannot be dissolved, diminished, or combined without their consent; and

(6) Increase or change the services or service charges that the urban service district is authorized to provide upon petition of no less than twenty-five percent (25%) of the electors of the district;

**History.** Acts 1995, No. 1090, § 4.

**14-95-303. Dissolution — Combination of service district.**

Dissolution or any combination of service districts shall provide for the following:

- (1) The transfer or other disposition of property and other rights, claims, and assets of the district;
- (2) The payment of all obligations from the resources of the district;
- (3) The payment of all costs of abolishing or combining a district from the resources of the districts involved;
- (4) The honoring of any bonds, debt, contract, obligation, or cause of action accrued or established under the urban service district;
- (5) The provision for the:
  - (A) Equitable disposition of the assets of the district;
  - (B) Adequate protection of the legal rights of employees of the district; and
  - (C) Adequate protection of the legal rights of creditors; and
- (6) The transfer of all property and assets to the jurisdiction of the city or town.

**History.** Acts 1995, No. 1090, § 4.

**14-95-304. Voter approval.**

All changes in urban service districts may be submitted to the electors of the existing or proposed district, whichever is larger, by initiative or referendum.

**History.** Acts 1995, No. 1090, § 4.

**SUBCHAPTER 4 — ADMINISTRATION****SECTION.**

14-95-401. Administration of urban service districts.

**SECTION.**

14-95-402. Service charges — Levy.

14-95-403. Service charges — Billing.

**14-95-401. Administration of urban service districts.**

(a) An urban service district shall be administered directly as a part of the office of the mayor, or the city manager or city administrator, as a part of a department with or without an advisory or administrative board, or as a separate department with or without an advisory or administrative board, as defined in the petition and establishing ordinance.

(b) The budget for each urban service district shall be appropriated as other funds of the city.

**History.** Acts 1995, No. 1090, § 5.



**14-95-402. Service charges — Levy.**

(a) The governing body of the city or town is authorized to levy, by ordinance, service charges for the district to establish, operate, maintain, support, and otherwise provide any and all services authorized for the district.

(b)(1) Service charges adopted by the governing body shall be equally administered on a per capita or per household basis, or on a per unit of service basis, or a combination of these methods.

(2) Services charge levied on a per capita or per household basis shall be collected equally without regard to whether or not an individual or household avails itself of the service.

(c) Except as otherwise provided for in this chapter, no service fee may be levied for a period of time exceeding ten (10) years except upon a new petition from electors in the service district and by passage of a new authorizing ordinance by the city or town's governing body per the provisions in this chapter.

**History.** Acts 1995, No. 1090, § 3.

**14-95-403. Service charges — Billing.**

(a)(1) Service charges for urban service districts may be entered on the municipal water bill, sewer bill, or garbage bill.

(2) Funds collected on the bills by the municipal utilities shall be paid over to the depository for the district's funds.

(3) Upon nonpayment of service fees, the municipality or municipal utility may discontinue water, sewer, or garbage services as provided in its own ordinances.

(b)(1) Funds raised through service charges for an urban service district may be used only for urban service district purposes.

(2) These public funds shall be maintained in the town or city treasury and accounted for as a separate enterprise fund.

(3) Disbursements of all urban service district funds shall be made only upon voucher or claim presented to and approved by the mayor, city manager, or city administrator.

**History.** Acts 1995, No. 1090, § 5.

**SUBCHAPTER 5 — CAPITAL CONSTRUCTION AND IMPROVEMENTS PROGRAM****SECTION.**

14-95-501. Creation.

14-95-502. Financing.

**14-95-501. Creation.**

(a) The governing body of a city or town which has established an urban service district is authorized to compile a program of capital construction, reconstruction, and improvements within the district and

submit the program to the Arkansas Development Finance Authority.

(b) Each program shall specify:

(1) The capital construction, reconstruction, and improvements to be made within the district;

(2) The estimates of cost of the specific projects; and

(3) The total cost for each district within a municipality.

(c) The mayor, city manager, or city administrator is authorized to employ architects and other like professional and technical assistance as is determined to be necessary for laying out, compiling, and implementing the program of capital construction, reconstruction, and improvements within the district.

**History.** Acts 1995, No. 1090, § 6.

### **14-95-502. Financing.**

(a) To finance the cost of the program, the governing body of each municipality shall adopt a resolution pledging the urban service district's service charges, or a portion thereof, to finance the program compiled for the district.

(b) The resolution shall specify:

(1) The district's projected revenues;

(2) The projected costs of the program; and

(3) The period of time for which the district's revenues shall be obligated.

**History.** Acts 1995, No. 1090, § 6.

## **SUBCHAPTER 6 — ARKANSAS DEVELOPMENT FINANCE AUTHORITY**

### **SECTION.**

14-95-601. Pledge of revenues.

14-95-602. Revenue bonds.

14-95-603. Issuance.

14-95-604. Restrictions.

14-95-605. Bond fund.

### **SECTION.**

14-95-606. Deposit of proceeds.

14-95-607. Liens and pledges.

14-95-608. Pledged revenues.

14-95-609. Resolutions and indentures.

14-95-610. Bond description and liability.

### **14-95-601. Pledge of revenues.**

(a) On and after the effective date of this chapter, the Arkansas Development Finance Authority is authorized:

(1) To receive from an urban service district a pledge of revenues; and

(2) To package several programs of the districts from several counties and municipalities into a single bond issue to finance the various programs of the several districts.

(b) The authority is authorized to execute and deliver the pledges, resolutions, instruments, and other undertakings and writings and to take any action as may be appropriate to evidence the debt obligations and the security therefor and to carry out the purposes of this chapter.

**History.** Acts 1995, No. 1090, § 7.

**14-95-602. Revenue bonds.**

(a) Pursuant to the intention of the General Assembly expressed in § 15-5-303, the Arkansas Development Finance Authority is hereby authorized and empowered to issue revenue bonds, at one (1) time or from time to time, and to use the proceeds thereof to:

(1) Provide urban service districts in various counties or municipalities with money for a program of capital construction, reconstruction, improvements, and services within the districts for purposes set forth in this chapter;

(2) Pay all incidental expenses in connection with those purposes;

(3) Pay the expenses of authorizing and issuing the bonds;

(4) Establish a debt service reserve to secure the payment of the bonds, if the authority deems it desirable; and

(5) Make provision for the payment of interest and trustee's fees on the bonds.

(b) The bonds outstanding under this chapter may be in such principal amount as the authority shall determine to be necessary for the accomplishment of the purposes of this chapter.

(c) The bonds shall be authorized, shall be sold by the means, shall bear the rate or rates of interest, and shall be executed and delivered in the manner as the authority may determine pursuant to the provisions of §§ 15-5-301—15-5-316, inclusive.

(d) The bonds issued shall mature over a period of not more than thirty (30) years.

(e) The authority is authorized to enter into authorizing resolutions and trust indentures as it deems necessary to secure the revenue bonds.

**History.** Acts 1995, No. 1090, § 7, 8.

**14-95-603. Issuance.**

(a) Bonds may be issued for the purpose of refunding any bonds issued under this chapter.

(b) Refunding bonds may be issued by the Arkansas Development Finance Authority pursuant to the provisions of § 15-5-314.

**History.** Acts 1995, No. 1090, § 13.

**14-95-604. Restrictions.**

All pledged revenues are hereby specifically declared to be restricted in their use and dedicated and to be used solely as provided and authorized in this chapter.

**History.** Acts 1995, No. 1090, § 10.



**14-95-605. Bond fund.**

(a) Commencing the first day of the month succeeding the issuance of the bonds under this chapter and so long as any bonds are outstanding under this chapter, the pledged revenues of each municipality's urban service district shall be periodically transferred to the authority and shall not be subject to appropriation by the municipality, but, as and when received by the authority, shall be deposited in a bank or banks selected by the authority to the credit of a fund designated as the "Urban Service District Revenue Bond Fund", with appropriate identification for separate issues or series.

(b)(1) So long as any bonds are outstanding under this chapter, all moneys in any bond fund shall be used solely for the payment of the principal of, premiums, if any, interest on, and trustees' and paying agents' fees in connection with the bonds, with the maintenance of necessary funds and reserves.

(2) Except that, the authorizing resolution or trust indenture may provide for the withdrawal, for other purposes, of surplus moneys, as defined in the authorizing resolution or trust indenture.

(c) Nothing in § 14-95-604, this section, or § 14-95-608 is intended to prohibit the authority from investing moneys received under this section, § 14-95-604, or § 14-95-608, as provided in this chapter.

**History.** Acts 1995, No. 1090, § 10.

**14-95-606. Deposit of proceeds.**

(a) The Arkansas Development Finance Authority shall include necessary provisions in the authorizing resolution or trust indenture to provide for the deposit of the proceeds of the bonds pursuant to the provisions of § 15-5-209.

(b) The authority may create and establish one (1) or more special funds in such depositories and make such investment as it may designate to provide for the construction, secure the bonds, establish reserves, and fund other necessary functions or activities authorized by this chapter.

**History.** Acts 1995, No. 1090, § 12.

**14-95-607. Liens and pledges.**

(a) The principal of, premiums, if any, interest on, and trustees' and paying agents' fees in connection with the bonds shall be secured by a lien on and pledge of, and shall be payable from, the pledged revenues defined in § 14-95-608.

(b) The authorizing resolution or trust indenture shall set forth details of the nature and extent of the lien and pledge, including provisions for the use of surplus revenues, if any, for any other lawful purposes.

**History.** Acts 1995, No. 1090, § 9.

#### **14-95-608. Pledged revenues.**

The principal of, premiums, if any, interest on, and trustees' and paying agents' fees in connection with all bonds issued under this chapter shall be secured solely by a lien on and pledge of each municipality's urban service district's revenues derived from their service charges credited to the town or city treasury, and the pledging of those revenues, the "pledged revenues", is hereby authorized.

**History.** Acts 1995, No. 1090, § 10.

#### **14-95-609. Resolutions and indentures.**

(a) Any authorizing resolution and trust indenture shall, together with this chapter, constitute a contract between the Arkansas Development Finance Authority and the holders and registered owners of the bonds, which contract, and all covenants, agreements, and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of the contract, and the covenants, agreements, and obligations of the authority may be enforced by mandamus or other appropriate proceedings at law or in equity.

(b) In this regard, in addition to other provisions referred to above, the authority is hereby expressly authorized to include in any authorizing resolution or trust indenture a covenant that, to the fullest extent possible, each municipality's urban service district's revenues derived from its service charges will be collected under this chapter to the fullest extent possible so as to avoid any impairment of the security for the bonds and that the authority will always maintain reserves at proper levels, and otherwise comply with any provisions of authorizing resolutions or trust indentures concerning revenues and bonds.

**History.** Acts 1995, No. 1090, § 11.

#### **14-95-610. Bond description and liability.**

(a) It shall be plainly stated on the face of each bond that:

(1) It has been issued under the provisions of this chapter;

(2) The bonds shall be obligations only of the Arkansas Development Finance Authority, as specified in the applicable trust indenture; and

(3) In no event shall they constitute indebtedness for which the faith and credit of the State of Arkansas or any of its revenues, within the meaning of Arkansas Constitution, Amendment 20, are pledged.

(b) No member of the authority shall be personally liable on the bonds.

**History.** Acts 1995, No. 1090, § 9.

**CHAPTERS 96-103**

[Reserved]



# Index to Title 14 (54-103)

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## A

### **ABANDONMENT.**

#### **Municipal corporations.**

Improvement districts.

Effect of abandonment of improvements, §14-91-101.

#### **Municipal improvement districts.**

Construction, operation, repair and sale of improvements.

Effect of abandonment of improvements, §14-91-101.

### **ACCOUNTS AND ACCOUNTING.**

#### **Municipal corporations.**

See MUNICIPAL CORPORATIONS.

### **ACTIONS.**

#### **Improvement districts.**

See IMPROVEMENT DISTRICTS.

#### **Municipal corporations.**

Ordinances.

Suits for recovery of fines by cities and towns, §14-55-605.

Additional remedies of cities of first class, §14-55-606.

Additional remedies of cities of second class, §14-55-607.

Limitation of actions, §14-55-605.

#### **Municipal property owners' improvement districts.**

Priority of cases under provisions, §14-94-114.

#### **Property owners' improvement districts.**

Power to sue and be sued, §14-93-112.

### **ADVERTISING.**

#### **Improvement districts.**

Municipal districts.

Assessments.

In rem proceedings to foreclose lien.

Sale of foreclosed property, §14-90-1409.

### **AFFIDAVITS.**

#### **Improvement districts.**

Municipal districts.

Assessments.

Delinquencies.

Unredeemed land, §14-90-911.

### **AFFIDAVITS —Cont'd**

#### **Municipal corporations.**

Accounts and accounting.

Submission of affidavit, §14-59-115.

### **AGE.**

#### **Municipal corporations.**

Taxicabs.

Drivers' licenses.

Proof of age required, §14-57-404.

### **AIR FORCE MILITARY INSTALLATIONS.**

**Control of property use near installation,** §14-56-426.

### **AIRPORTS.**

#### **Improvement districts.**

Municipal districts.

Surplus funds of airport improvement districts.

Disposition, §14-89-1304.

### **ALLEYS.**

#### **Box-ball alleys.**

Power of municipality to license, regulate, etc., §14-54-1401.

#### **Municipal corporations.**

Establishment and improvement of alleys, §14-54-601.

Ordinances.

Persons in jail for violation of city or town ordinances.

Work on streets and improvements, §14-55-603.

Working out fines on streets and alleys, §14-55-604.

### **ANNEXATION.**

#### **Property owners' improvement districts.**

Hearings, §14-93-133.

Land outside boundaries of district may be annexed, §14-93-133.

Notice, §14-93-133.

Petitions, §14-93-133.

Purposes, §14-93-133.

### **APPEALS.**

#### **Improvement districts.**

Correction of errors and irregularities in formation of districts, §14-86-403.

**APPEALS —Cont'd****Improvement districts —Cont'd****Municipal districts.**

Actions involving validity of districts or assessments or title to office or tax collection, §14-88-504.

Assessments, §14-90-501.

Certification to board of assessors, §14-90-502.

Correction of erroneous descriptions or omitted lands, §14-90-601.

Finding of council on appeal, §14-90-502.

Revision of assessments, §14-90-602.

Sales of property, §§14-90-1201 to 14-90-1204.

Time to prosecute appeal, §14-90-1202.

Construction, operation, repair and sale of improvements.

Changing of plans or certain cities, §14-91-1105.

Continuance of district for purpose of making improvements and repairs.

Readjustment of assessment, §14-91-604.

Waterworks, electric plants and sewers.

Sale of waterworks and sewer system constructed by same district, §§14-91-1001, 14-91-1006.

**Municipal corporations.**

Taxis.

Applications for permit.

Judicial review, §14-57-308.

Rates and charges, §14-57-303.

**Property owner's improvement district.**

Creation, §14-93-106.

**APPROPRIATIONS.****Municipal corporations.**

Approval of appropriations.

Required, §14-55-204.

Planning, §14-56-410.

Metropolitan or regional planning commissions, §14-56-509.

**ARREST.****Municipal corporations.**

Shopping centers.

Control of areas adjacent to shopping centers.

Policing of area, §14-54-504.

**ASSESSMENTS.****Improvement districts.**

General provisions.

See IMPROVEMENT DISTRICTS.

Municipal districts, §§14-90-101 to 14-90-1411.

See IMPROVEMENT DISTRICTS.

**Municipal property owners' improvement districts.**

Benefits and damages, §14-94-115.

Filing, §14-94-116.

Hearing, §14-94-116.

Interest on assessment, §14-94-119.

Levy of tax, §14-94-118.

Subsequent levies, §14-94-121.

Notice, §14-94-116.

Reassessments, §14-94-117.

**Property owners' improvement districts.**

See PROPERTY OWNERS'

IMPROVEMENT DISTRICTS.

**ATTORNEYS AT LAW.****Municipal corporations.**

Clearance of unsightly and unsanitary conditions of real property.

Notice upon unknown or nonresident owners.

Attorneys ad litem, §14-54-902.

**AUCTIONS AND AUCTIONEERS.****Municipal corporations.**

Livestock.

Authority of municipal corporations to regulate or prohibit auction sale of horses, etc., §14-54-1104.

**AUDITS AND AUDITORS.****Improvement districts.**

Nonmunicipal improvement districts, §§14-86-2001 to 14-86-2007.

See IMPROVEMENT DISTRICTS.

**Local governments.**

Management letter for audit of political subdivisions.

Contents, §14-75-103.

Copy furnished legislative joint auditing committee, §14-75-104.

Definition of "political subdivision," §14-75-101.

Required, §14-75-102.

**Municipal corporations.**

Annual audits.

Cities of the first class, §14-58-307.

Cities of the first class.

Annual audits, §14-58-307.

Review of accounting records when audit by independent accountant.

Purpose, §14-58-101.

**B****BANKRUPTCY AND INSOLVENCY.****Local governments.**

Taxing agencies and instrumentalities,  
§14-74-103.

**BANKS.****Municipal corporations.**

Accounts and accounting.  
Bank accounts, §14-59-104.  
Reconciliation, §14-59-108.

**BARBER POLES.****Municipal corporations.**

Prohibition against use of barber poles  
forbidden, §14-54-1406.

**BARBERS.****Poles.**

Prohibition against use of barber poles  
forbidden, §14-54-1406.

**BEGGING.****Municipal corporations.**

Powers of cities to punish,  
§14-54-1408.

**BIDS AND BIDDING.****Municipal corporations.**

Insurance.  
Cities of the first class, §14-58-304.  
Purchase by first class cities,  
§14-58-304.  
Purchases and supplies, §14-58-303.

**BILLIARDS.****Licenses.**

Municipal corporations.  
Power to license, §14-54-1401.

**Municipal corporations.**

Licenses.  
Power to license, §14-54-1401.  
Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.  
Taxation.  
Power to tax, §14-54-1401.

**Taxation.**

Municipal corporations.  
Power to tax, §14-54-1401.

**BIOGENIC GASES.****Municipal corporations.**

Processing crude biogenic gases.  
Lease, sale or conveyance of real  
property for, §§14-54-401 to  
14-54-404.  
See MUNICIPAL  
CORPORATIONS.

**BLUE LAWS.****Municipal corporations.**

Authority to operate businesses on  
Sunday, §14-54-1402.  
Motion picture show laws  
unaffected, §14-54-1402.

**BOARDS AND COMMISSIONS.****Finance.**

Municipal corporations.  
Committees, §14-58-301.

**Municipal corporations.**

Planning.  
Commissions, §§14-56-401 to  
14-56-425.  
See MUNICIPAL  
CORPORATIONS.

**Planning.**

Municipal corporations.  
Commissions, §§14-56-401 to  
14-56-425.  
See MUNICIPAL  
CORPORATIONS.

**BOND ISSUES.****Improvement districts.**

See IMPROVEMENT DISTRICTS.

**Jails.**

Counties.  
Indebtedness for courthouses and  
jails, §§14-72-301 to 14-72-307.  
See COUNTIES.

**Local governments.**

Elections.  
See LOCAL GOVERNMENT  
REVENUE BOND  
ELECTIONS.  
Revenue bond elections.  
See LOCAL GOVERNMENT  
REVENUE BOND  
ELECTIONS.

**Municipal corporations.**

Refund of amendment 13 municipal  
bond proceeds.  
General provisions, §§14-72-701 to  
14-72-703.  
See MUNICIPAL  
CORPORATIONS.

**Municipal property owners'  
improvement districts.**

Financing improvements, §14-94-123.  
Payment of bonds and interest,  
§14-94-125.  
Source of payment, §14-94-125.  
Tax exemption, §14-94-124.  
Terms and conditions, §14-94-123.

**Property owners' improvement  
districts, §14-93-124.**

Failure to pay.  
Appointment of receivers,  
§14-93-126.  
Security, §14-93-126.  
Services turned over to municipality.  
Revenue bonds, §14-93-130.  
Tax exemption, §14-93-125.



**BOND ISSUES —Cont'd****Refunding bonds.**

Municipal corporations.

See MUNICIPAL CORPORATIONS.

**Urban service districts.**

Development finance authority,

§§14-95-601 to 14-95-610.

See DEVELOPMENT FINANCE  
AUTHORITY.**BONDS, SURETY.****Improvement districts.**Construction, operation, repair and  
sale of improvements.

Contractors' bonds.

Actions on bonds, §14-91-106.

Depository to give bond, §14-86-1802.

Penalty for failure to require,  
§14-86-1801.

Municipal districts.

City improvement collector,  
§14-88-405.

Collector and treasurer, §14-88-403.

Construction, operation, repair and  
sale of improvements.

Contractors' bonds, §14-91-201.

Treasurer, §14-88-404.

Suburban improvement districts.

Contractors, §14-92-211.

**Motor carriers.**

Municipal corporations, §14-57-202.

**Municipal corporations.**

General provisions.

See MUNICIPAL CORPORATIONS.

**BOUNDARIES.****Property owners' improvement  
districts.**Annexation of lands outside district  
boundaries, §14-93-133.**BOWLING ALLEYS.****Municipal corporations.**

Licenses.

Power to license, §14-54-1401.

Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.

Taxation.

Power to tax, §14-54-1401.

**BOX-BALL ALLEYS.****Municipal corporations.**Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.**BRIDGES.****Improvement districts.**

Surplus funds, §14-86-1901.

Taxation.

Collection of taxes.

Enforcement of collection  
generally, §14-86-802.**BROTHELS.****General powers of cities and towns,**  
§14-54-103.**BUDGETS.****Municipal corporations.**

Adoption, §14-58-202.

Alteration or revision authorized,  
§14-58-203.

Exception, §14-58-203.

Annual adoption of budget,  
§14-58-202.

Annual financial reports.

Submitted by mayor, §14-58-302.

Applicability of provisions, §14-58-201.

Approval, §14-58-203.

Mayor-council form of government,  
§14-58-201.

Reports.

Annual financial reports submitted  
by mayor, §14-58-302.**Reports.**

Municipal corporations.

Annual financial reports submitted  
by mayor, §14-58-302.**Urban service districts,** §14-95-401.**BUILDINGS.****Eminent domain.**

Municipal corporations.

Cities and towns on state line.

Passage of condemnation  
ordinance, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise,  
§14-54-106.**BURIALS.****Municipal corporations.**

Burial outside city limits, §14-54-803.

Power to require burial outside city  
limits, §14-54-803.

Regulations, §14-54-802.

Removal of bodies.

Burial outside city limits,  
§14-54-803.**BUSES.****Municipal corporations.**

Regulation, §14-57-101.

**C****CARRIAGES.****Municipal corporations.**Regulation of carriages for hire,  
§14-54-1403.**CEMETERIES.****Burials.**

Municipal corporations.

Regulations, §§14-54-802, 14-54-803.

**CEMETERIES —Cont'd****Municipal corporations.**

Burial regulations, §§14-54-802,  
14-54-803.

**CHANCERY COURTS.****Improvement districts.**

Consolidation.

Jurisdiction over refunding bonds  
and reorganization of districts,  
§14-87-103.

**CHECKS.****Municipal corporations.**

Accounts and accounting.

Prenumbered checks, §14-59-105.

**CIRCUIT COURTS.****Appeals.**

Jurisdiction.

Municipal corporations.

Planning.

Jurisdiction on appeal,  
§14-56-425.

Municipal corporations.

Planning.

Jurisdiction on appeal, §14-56-425.

**Jurisdiction.**

Municipal corporations.

Planning.

Jurisdiction on appeal, §14-56-425.

**Municipal corporations.**

Planning.

Jurisdiction on appeal, §14-56-425.

**CITIES.****General provisions.**

See MUNICIPAL CORPORATIONS.

**CITY COURTS.****Penalties.**

Fines paid into city or town treasury,  
§14-55-608.

**CLAIMS.****Municipal corporations.**

Bond issues.

Refund of amendment 13 municipal  
bond proceeds.

Filing of claims, §14-72-702.

Payment of claims, §14-58-305.

**CONFLICTS OF INTEREST.****Improvement districts.**

Municipal districts.

Board of improvements,

§§14-88-309, 14-88-310.

Suburban improvement districts.

Commissioners, §14-92-208.

**CONSOLIDATION.****Improvement districts.**

See IMPROVEMENT DISTRICTS.

**CONSTRUCTION.****Improvement districts.**

Municipal districts.

Construction, operation, repair and  
sale of improvements,

§§14-91-101 to 14-91-1106.

See IMPROVEMENT DISTRICTS.

**CONSTRUCTION AND  
INTERPRETATION.****Improvement districts.**

Consolidation.

Existing laws not repealed,  
§14-87-101.

Correction of errors and irregularities  
in formation of districts,  
§14-86-401.

Destruction of section corners.

Applicability of act, §14-86-501.

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien, §14-90-1402.

Investments.

Applicability of 1949 act,  
§§14-90-102, 14-90-103.

Suburban improvement districts.

Applicability of provisions,  
§14-92-202.

**Municipal corporations.**

Bond issues secured by parking meter  
funds.

Liberal construction, §14-57-602.

Manager form of government.

City manager enabling act of 1989.

Applicability of chapter,  
§14-61-102.

Liberal construction, §14-61-103.

Parking meters.

Liberal construction, §14-57-602.

Planning, §14-56-401.

**Municipal property owners'  
improvement districts,  
§14-94-104.****Property owner's improvement  
district.**

Construction of act, §14-93-104.

**CONSTRUCTIVE SERVICE.****Warning orders.**

Municipal improvement districts.

In rem proceedings to foreclose  
assessment lien, §14-90-1408.

Levee and flood control districts.

Eminent domain.

Foreign landowners, §14-91-309.

**CONTRACTORS.****Improvement districts.**

Municipal districts.

Construction, operation, repair and sale of improvements, §14-91-201.

Suburban improvement districts, §§14-92-211, 14-92-213.

**CONTRACTS.****Improvement districts.**

Municipal districts.

Board of improvements.

Conflicts of interest, §14-88-309.

Power to contract, §14-88-210.

**Property owners' improvement districts.**

Consolidation of districts, §14-93-131.

**United States.**

Grants.

Municipal corporations.

Contracts for federal grants or assistance, §14-54-108.

**CONVEYANCES.****Improvement districts.**

Municipal districts.

Winding up affairs, §14-88-604.

**COPIES.****Municipal corporations.**

Ordinances.

Adoption of technical codes by reference.

Filing copies, §14-55-207.

Printed or certified copies admissible in evidence, §14-55-402.

Duty of clerk or recorder to furnish, §14-55-402.

**COSTS.****Improvement districts.**

Assessments.

Delinquencies.

Counties of more than 150,000.

Effect on costs in actions for collection of assessments, §14-86-1302.

Sale of land.

Notice to landowners, §14-86-1404.

**Municipal corporations.**

Sanitation.

Clearance of unsightly and unsanitary conditions of real property.

Clearance by city upon refusal of owner, §14-54-903.

**COUNTIES.****Bond issues.**

Elections.

Indebtedness for courthouses and jails, §§14-72-301, 14-72-303, 14-72-304.

Indebtedness for courthouses and jails.

Appeals.

Election results, §14-72-304.

Constitutional Amendment No. 17.

Refunding bonds under, §14-72-205.

Election on question, §§14-72-301, 14-72-303.

Appeal, §14-72-304.

Ballot.

Form, §14-72-304.

Interest, §14-72-302.

Maturity of bonds, §14-72-302.

Sale of bonds, §§14-72-302, 14-72-306.

Bids, §§14-72-302, 14-72-306.

Notice, §14-72-306.

Taxation.

Levy of funding bond tax, §§14-72-305, 14-72-307.

Interest.

Indebtedness for courthouses and jails, §14-72-302.

Refunding bonds, §14-72-201.

Certificates of indebtedness for interest due on refunded bonds, §14-72-203.

Notice.

Indebtedness for courthouses and jails.

Sale of bonds, §§14-72-302, 14-72-306.

Publication.

Constitutional Amendment No. 17.

Refunding bonds under.

Order as to, §14-72-205.

Indebtedness for courthouses and jails.

Notice of sale, §§14-72-302, 14-72-306.

Refunding bonds.

Authorized, §14-72-201.

Certificates of indebtedness for interest due on refunded bonds and expense of issuing refunding bonds, §14-72-203.

Constitutional Amendment No. 17.

Refunding bonds under, §14-72-205.

Form of bonds, §14-72-202.



**COUNTIES —Cont'd****Bond issues —Cont'd**

## Refunding bonds —Cont'd

Interest, §14-72-201.

Certificates of indebtedness for interest due on refunded bonds, §14-72-203.

Issuance of bonds, §14-72-201.

Maturity of bond, §14-72-201.

Rights and remedies of bond holders, §14-72-202.

Tax for original bonds.

Continued for refunding bonds, §14-72-204.

**Taxation.**

Indebtedness for courthouses and jails.

Levy of funding bond tax, §§14-72-305, 14-72-307.

Refunding bonds.

Tax original bonds continued for refunding bonds, §14-72-204.

**Elections.**

Bond issues.

Indebtedness for courthouses and jails, §§14-72-301, 14-72-303, 14-72-304.

**Fiscal year, §14-71-101.****Improvement districts.**

See IMPROVEMENT DISTRICTS.

**Interest.**

Bond issues.

Indebtedness for courthouses and jails, §14-72-302.

Refunding bonds, §14-72-201.

Certificates of indebtedness for interest due on refunded bonds, §14-72-203.

**Jail.**

Indebtedness for courthouses and jails, §§14-72-301 to 14-72-307. See within this heading, "Bond issues."

**Notice.**

Bond issues.

Indebtedness for courthouses and jails.

Sale of bonds, §§14-72-302, 14-72-306.

**Publication.**

Bond issues.

Constitutional Amendment No. 17. Refunding bonds under.

Order as to, §14-72-205.

Indebtedness for courthouses and jails.

**COUNTIES —Cont'd****Publication —Cont'd**

Bond issues —Cont'd

Indebtedness for courthouses and jails —Cont'd

Notice of sale, §§14-72-302, 14-72-306.

**Taxation.**

Bond issues.

Indebtedness for courthouses and jails.

Levy of funding bond tax, §§14-72-305, 14-72-307.

Refunding bonds.

Tax original bonds continued for refunding bonds, §14-72-204.

**Year.**

Fiscal year, §14-71-101.

**COUNTY CLERKS.****Improvement districts.**

Extending tax annually, §§14-86-901 to 14-86-905.

See IMPROVEMENT DISTRICTS.

**CRIMINAL LAW AND PROCEDURE.****Building regulations, §14-56-421.****Buses.**

Driver age, §14-57-401.

**Cities.**

Livestock running at large.

Driving or enticing stock into city, §14-54-1101.

Vehicle tax, §14-57-701.

**City improvement collector appointment, §14-88-405.****Delinquent improvement taxes and assessments in counties exceeding 75,000.**

Failure of collector to make, certify and file delinquent lists, §14-86-1203.

**Engineers working for improvement districts.**

Failure to relocate corners destroyed in doing work for district, §14-86-502.

**Estrays.**

Driving or enticing stock into city, §14-54-1101.

**Improvement districts.**

Engineers.

Failure to relocate corners destroyed in doing work for district, §14-86-502.

Establishment.

Circulation of petition for establishment without notice provisions, §14-86-201.

**CRIMINAL LAW AND PROCEDURE**

—Cont'd

**Improvement districts —Cont'd**

Officers or commissioners.

Failure to require bond of depository  
for district, §14-86-1801.Taxes and assessments in counties  
exceeding 75,000.

Delinquent taxes.

Failure of collector to make,  
certify and file delinquent  
lists, §14-86-1203.**Livestock.**

Running at large or straying.

Driving or enticing stock into city,  
§14-54-1101.**Medical waste.**

Incinerators, §14-56-605.

**Motor vehicle tax, §14-57-701.****Municipal improvement districts.**

Assessments.

Failure of collector to make payment  
to county treasurer or failure to  
certify delinquent lists,  
§14-90-901.

Board members.

Failure to make financial  
settlement, §14-89-1101.

Interest in contracts, §14-88-309.

Interest in loans, §14-88-310.

Misuse of proceeds of funding or  
refunding bonds, §14-89-201.

Financial reports.

Failure to file, §14-89-1401.

Subordinate officers.

Misuse of funds and unlawful  
actions generally, §§14-88-401,  
14-88-402.Misuse of proceeds of funding or  
refunding bonds, §14-89-201.**Nonmunicipal improvement district  
audits.**Failure or refusal to appear before  
director, §14-86-2003.**Property taxes.**Improvement district taxes and  
assessments in counties exceeding  
75,000.

Delinquent taxes.

Failure of collector to make,  
certify and file delinquent  
lists, §14-86-1203.Municipal improvement district  
assessments.Failure of collector to make payment  
or certify delinquent lists,  
§14-90-901.**CRIMINAL LAW AND PROCEDURE**

—Cont'd

**Running at large.**Driving or enticing livestock into city,  
§14-54-1101.**Suburban improvement district  
board officers, members or  
agents.**

Misuse of bond proceeds, §14-92-203.

**Taxation.**

Motor vehicle tax, §14-57-701.

**Taxicabs.**

Driver age, §14-57-401.

**Towns.**

Vehicle tax, §14-57-701.

**Zoning, §14-56-421.****D****DAMAGES.****Municipal property owners'  
improvement districts.**

Board of commissioners.

Liability of members, §14-94-107.

Removal of members.

Liability for damages.

Corrupt intent required,  
§14-94-108.**DEEDS.****Improvement districts.**

Assessments.

Delinquencies.

Redemption with bond issues.

Execution of deed, §14-86-803.

Municipal districts.

Assessments.

Redemption.

Certificate of purchase must be  
filed to make deed,  
§14-90-1303.Execution of deed after  
expiration of redemption  
period, §14-90-1303.**DEFINED TERMS.****Address.**

Notice on formation, §14-86-301.

**Area adjacent to the municipality.**Advancement of funds by  
municipalities, §14-89-801.**Blocks, lots or parcels of land.**Municipal improvement districts.  
Assessment, §14-90-101.**Bonds.**Local government revenue bond  
elections, §14-72-603.**City affected by this chapter.**City manager enabling act of 1989,  
§14-61-102.**Clerk.**Local government revenue bond  
elections, §14-72-603.

**DEFINED TERMS —Cont'd****Clerk —Cont'd**

Municipal property owner's improvement districts, §14-94-103.

**Collector.**

Counties exceeding seventy five thousand, §14-86-1201.

**Commercial medical waste.**

Municipal building and zoning regulations, §14-56-601.

**County.**

Local government revenue bond elections, §14-72-603.

**Executive officer.**

Local fiscal management responsibility act, §14-77-102.

**Facilities.**

Municipal property owner's improvement districts, §14-94-103.

**Fiscal responsibility and management laws.**

Local fiscal management responsibility act, §14-77-102.

**Governing body.**

Local government reserve funds, §14-73-101.

Municipal property owner's improvement districts, §14-94-103.

**Improvement district.**

Advancement of funds by municipalities, §14-89-801.

**Improvements.**

Local government reserve funds, §14-73-101.

Municipal property owner's improvement districts, §14-94-103.

Property owner's improvement district, §14-93-103.

**Independence.**

Audit of municipal corporation by independent accountant, §14-58-101.

**Knowingly.**

Local fiscal management responsibility act, §14-77-102.

**Land.**

Property owner's improvement districts, §14-93-103.

Suburban improvement districts, §14-92-201.

**Last federal census.**

Suburban improvement districts, §14-92-201.

**Legislative bodies.**

Local government revenue bond elections, §14-72-603.

Municipal parking meter revenues, §14-57-601.

**DEFINED TERMS —Cont'd**

**Levees and flood control projects,** §14-91-302.

**Local government.**

Reserve funds, §14-73-101.

**Local governmental units.**

Rent control preemption, §14-54-1409.

**Local unit of government.**

Firearms and ammunition, §14-54-1411.

**Majority in value.**

Suburban improvement districts, §14-92-201.

**Municipality.**

Advancement of funds by municipalities, §14-89-801.

Golf cart.

Operation on city streets, §14-54-1410.

Local government revenue bond elections, §14-72-603.

Municipal property owner's improvement districts, §14-94-103.

Parking meter revenues, §14-57-601.

**Nearby municipality.**

Municipal property owner's improvement districts, §14-94-103.

Property owner's improvement districts, §14-93-103.

Suburban improvement districts, §14-92-201.

**Net revenues.**

Municipal parking meter revenues, §14-57-601.

**Ordinance.**

Local government revenue bond elections, §14-72-603.

**Organization expenses.**

Advancement of funds by municipalities, §14-89-801.

**Original district.**

Reorganization or consolidation of improvement districts, §14-87-102.

**Permanently affixed to a foundation.**

Mobile homes, §14-86-102.

**Person.**

Municipal property owner's improvement districts, §14-94-103.

Property owner's improvement districts, §14-93-103.

**Per tract.**

Delinquent improvement taxes and assessments.

Counties exceeding seventy five thousand, §14-86-1201.

**Political subdivisions.**

Local fiscal management responsibility act, §14-77-102.



**DEFINED TERMS —Cont'd****Property owner.**

Municipal street or water improvement districts.

Refund of excess collections, §14-89-1201.

**Public officer or employee.**

Local fiscal management responsibility act, §14-77-102.

**Real property.**

Delinquent improvement taxes and assessments, §14-86-1101.

Counties exceeding seventy five thousand, §14-86-1201.

Municipal improvement districts.

Assessments, §14-90-101.

Municipal property owner's improvement districts, §14-94-103.

Property owner's improvement districts, §14-93-103.

Suburban improvement districts, §14-92-201.

**Revenue bonds.**

Local government revenue bond elections, §14-72-603.

**Subsidiary district.**

Reorganization or consolidation of improvement districts, §14-87-102.

**Taxicab operators.**

Municipal regulation, §14-57-301.

**Taxicabs.**

Municipal regulation, §14-57-301.

**Taxing district.**

Reorganization or consolidation of improvement districts, §14-87-102.

**Technical codes.**

Municipal adoption by reference, §14-55-207.

**DEPOSITORIES.****Improvement districts.**

Bonds, surety, §14-86-1802.

Penalty for failure to require, §14-86-1801.

**DESTRUCTION OF SECTION CORNERS, §§14-86-501 to 14-86-504.**

See IMPROVEMENT DISTRICTS.

**DEVELOPMENT FINANCE AUTHORITY.****Bond issues.**

Urban service districts, §§14-95-601 to 14-95-610. See within this heading, "Urban service districts."

**DEVELOPMENT FINANCE****AUTHORITY —Cont'd****Urban service districts.**

Bond issues, §§14-95-602, 14-95-603, 14-95-610.

Authorizing resolution and trust indenture, §14-95-602.

Effect, §14-95-609.

Bond fund, §14-95-605.

Deposit of proceeds, §14-95-606.

Refunding bonds, §14-95-603.

Security for bonds, §14-95-607.

Pledge of revenues, §§14-95-601, 14-95-608.

Restrictions, §14-95-604.

Security for bonds, §14-95-607.

**DISSOLUTION.****Improvement districts.**

Municipal districts.

Reversion of surplus funds, §14-89-1305.

**Municipal property owners' improvement districts, §14-94-126.****DISTRICTS.****Improvement districts.**

Counties.

See IMPROVEMENT DISTRICTS.

General provisions.

See IMPROVEMENT DISTRICTS.

Municipal districts.

General provisions.

See IMPROVEMENT DISTRICTS.

Property owners' improvement districts.

General provisions, §§14-93-101 to 14-93-133.

See PROPERTY OWNERS' IMPROVEMENT DISTRICTS.

Municipal property owners' improvement districts, §§14-94-101 to 14-94-128.

See MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICTS.

Suburban improvement districts, §§14-92-101 to 14-92-603.

See IMPROVEMENT DISTRICTS.

Urban service districts, §§14-95-101 to 14-95-610.

See URBAN SERVICE DISTRICTS.

**DISTRICTS —Cont'd****Municipal corporations.**

Improvement districts.

See IMPROVEMENT DISTRICTS.

**Municipal improvement districts.**

See IMPROVEMENT DISTRICTS.

**Municipal property owners'****improvement districts,**

§§14-94-101 to 14-94-128.

See MUNICIPAL PROPERTY

OWNERS' IMPROVEMENT

DISTRICTS.

**Suburban improvement districts,**

§§14-92-101 to 14-92-603.

**Urban service districts, §§14-95-101**

to 14-95-610.

See URBAN SERVICE DISTRICTS.

**DOGS.****Municipal corporations.**

Preventing dogs from running at large.

Destruction, §14-54-1102.

Notice required prior to

destruction of dog,

§14-54-1102.

Taxation.

Dogs and domestic animals,

§14-54-1103.

**Notice.**

Municipal corporations.

Preventing dogs from running at large.

Destruction.

Notice required prior to

destruction, §14-54-1102.

**DOLLAR-A-DAY ACT.****Municipal corporations, §14-55-603.****DRAINAGE.****Municipal corporations.**

Establishment and improvement,

§14-54-601.

Assessments, §14-54-601.

Lien collectible as delinquent

taxes, §14-54-604.

Method of assessing, §14-54-603.

Generally, §14-54-602.

**E****EDUCATION.****Improvement districts.**

Municipal districts.

Assessment.

School district property subject to assessment, §14-90-303.

**Municipal corporations.**

Aid to local public colleges and

universities, §§14-58-504,

14-58-505.

**EDUCATION —Cont'd****Municipal corporations —Cont'd**Financial aid granted school districts,  
§14-58-501.Funds from which school aid  
payable, §14-58-502.

Purpose, §14-58-501.

Terms of financial assistance grant,  
§14-58-503.

Nurses.

Training schools.

Authority of cities of the first class  
to establish, §14-54-801.**School districts.**

Municipal corporations.

Financial aid granted school  
districts, §14-58-501.Funds from which aid payable,  
§14-58-502.Terms of financial assistance  
grant, §14-58-503.**Taxation.**

Improvement districts.

Municipal districts.

Water and electric light  
improvement districts.School district tax, §§14-89-601  
to 14-89-603.**ELECTIONS.****Local government revenue bond elections.**

See LOCAL GOVERNMENT

REVENUE BOND ELECTIONS.

**Municipal corporations.**

Ordinances.

Referral to electors, §§14-55-301,  
14-55-302.

Parking meters.

Ordinances subject to initiative and  
referendum, §14-57-502.**ELECTRICITY.****Improvement districts.**

Electric light improvement districts.

Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers.See IMPROVEMENT  
DISTRICTS.

Municipal districts.

Bond issues.

Profits from electric plant,  
waterworks or sewer system  
to pay, §§14-89-901 to  
14-89-908.See IMPROVEMENT  
DISTRICTS.

**ELECTRICITY —Cont'd****Improvement districts —Cont'd****Municipal districts —Cont'd**

Water and electric light  
improvement districts.

School district tax, §§14-89-601 to  
14-89-603.

See IMPROVEMENT  
DISTRICTS.

**ELECTRONIC FUNDS TRANSFERS.****Municipal corporations.**

Disbursements by, §14-59-105.

**EMINENT DOMAIN.****Buildings.**

Municipal corporations.

Cities and towns on state line.

Exercise of right of eminent  
domain.

Procedure for exercise,  
§14-54-106.

Passage of condemnation  
ordinance, §14-54-106.

Powers, §14-54-106.

**Improvement districts.**

Municipal districts.

Construction, operation, repair and  
sale of improvements,  
§14-91-104.

Levee or flood control districts,  
§§14-91-308, 14-91-309.

Suburban improvement districts,  
§14-92-222.

Joint operation of contiguous  
districts, §14-92-310.

Purposes for eminent domain,  
§14-92-222.

**Municipal property owners'  
improvement districts.**

Powers of district, §14-94-112.

Sale of land acquired under provisions,  
§14-94-113.

**Parks and recreation.**

Municipal corporations.

Cities and towns on state line.

Passage of condemnation  
ordinances, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise,  
§14-54-106.

**Property owner's improvement  
districts.**

Powers, §14-93-113.

Purposes of exercise of eminent  
domain, §14-93-113.

**EMINENT DOMAIN —Cont'd  
Streets.**

Municipal corporations.

Cities and towns on state line.

Passage of condemnation  
ordinance, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise,  
§14-54-106.

**ENGINEERS.**

**Destruction of section corners,**  
§§14-86-501 to 14-86-504.

See IMPROVEMENT DISTRICTS.

**EVIDENCE.****Municipal corporations.**

Ordinances.

Code prima facie evidence,  
§14-55-703.

Printed or certified copies admissible  
in evidence, §14-55-402.

Toxicabs.

Applications for permits.

Hearings on applications.

Introduction of evidence,  
§14-57-307.

**F****FEDERAL AID.****Municipal corporations.**

Acceptance, §14-54-108.

Contracts, §14-54-108.

**FEES.****Improvement districts.**

Assessments.

Delinquencies.

Counties of more than 150,000.

Abolition of fee for recordation  
of delinquent list,  
§14-86-1304.

Redemption of land,  
§14-86-1302.

Counties with over 75,000  
population.

Clerk's fees, §§14-86-1207,  
14-86-1208.

Municipal districts.

Assessments.

Collector and treasurer fees,  
§14-90-913.

Delinquencies.

Clerk's fees for filing  
delinquencies, §14-90-912.

Unredeemed land, §14-90-911.

Extension of annual installments.  
Clerk's fee, §14-90-913.



**FEES —Cont'd****Municipal corporations.****Ordinances.**

Printed or certified copies admitted into evidence.

Furnishing by clerk or recorder, §14-55-402.

**FELONIES.****Municipal improvement district board members.**

Interest in contracts, §14-88-309.

Interest in loans, §14-88-310.

Misuse of funding or refunding bond proceeds, §14-89-201.

**Municipal improvement district subordinate officers.**

Misuse of funding or refunding bond proceeds, §14-89-201.

Misuse of funds and unlawful actions generally, §§14-88-401, 14-88-402.

**Suburban improvement district board officers, members or agents.**

Misuse of bond proceeds, §14-92-203.

**FERRIES.****Municipal corporations.**

Power to regulate, §14-54-1403.

**FINES.****Buses.**

Driver age, §14-57-401.

**Cabs.**

Driver age, §14-57-401.

**Cities.**

Livestock running at large.

Driving or enticing stock into city, §14-54-1101.

Vehicle tax, §14-57-701.

**City improvement collector appointment.**

Violations of provisions, §14-88-405.

**Engineers working for improvement districts.**

Failure to relocate corners destroyed in doing work for district, §14-86-502.

**Estrays.**

Driving or enticing stock into city, §14-54-1101.

**Improvement district engineers.**

Failure to relocate corners destroyed in doing work for district, §14-86-502.

**Improvement district officers or commissioners.**

Failure to require bond of depository for district, §14-86-1801.

**FINES —Cont'd****Improvement district taxes and assessments in counties exceeding 75,000.****Delinquent taxes.**

Failure of collector to make, certify and file delinquent lists, §14-86-1203.

**Livestock.**

Running at large.

Driving or enticing stock into city, §14-54-1101.

**Motor vehicles.**

Tax, §14-57-701.

**Municipal improvement district assessments.**

Failure of collector to make payment or certify delinquent lists, §14-90-901.

**Municipal improvement district board members.**

Failure to make financial settlement, §14-89-1101.

Interest in contracts, §14-88-309.

Interest in loans, §14-88-310.

Misuse of funding or refunding bond proceeds, §14-89-201.

**Municipal improvement district collectors or treasurers or other subordinate officers.**

Misuse of funding or refunding bond proceeds, §14-89-201.

Unlawful actions, §14-88-402.

**Nonmunicipal improvement district audits.**

Failure or refusal of person to appear before director, §14-86-2003.

**Property taxes.**

Improvement district taxes and assessments in counties exceeding 75,000.

**Delinquent taxes.**

Failure of collector to make, certify and file delinquent lists, §14-86-1203.

Motor vehicles, §14-57-701.

**Municipal improvement district assessments.**

Failure of collector to make payment or certify delinquent lists, §14-90-901.

**Running at large, livestock.**

Driving or enticing stock into city, §14-54-1101.

**Taxation.**

Motor vehicle tax, §14-57-701.

**Taxicabs.**

Driver age, §14-57-401.

**FINES —Cont'd****Towns.**

Vehicle tax, §14-57-701.

**FLOOD CONTROL.****Improvement districts.**

Municipal districts.

Construction, operation, repair and sale of improvements.

Levee and flood control districts.

See IMPROVEMENT DISTRICTS.

**FORECLOSURES.****Improvement districts.**

Municipal districts.

Assessments.

In rem proceedings to foreclose liens, §§14-90-1401 to 14-90-1411.

See IMPROVEMENT DISTRICTS.

**Municipal property owners' improvement districts.**

Action to foreclose.

Priority of cases, §14-94-114.

**FORFEITURES.****Improvement districts.**

Sale of forfeited lands.

Failure of title.

Amount of refund limited, §14-86-1702.

Claimant of refund chargeable with timber or minerals removed, §14-86-1703.

Refund of moneys received, §14-86-1701.

**FORMS.****Milk and milk products.**

Municipal corporations.

Ordinances regulating production, processing and sale of milk, §14-54-1202.

**Municipal corporations.**

Milk and milk products.

Ordinances regulating production, processing and sale of milk, §14-54-1202.

Parking meters.

Bond issues secured by parking meter funds, §14-57-606.

**FUNDS.****Ice plants.**

Municipal corporations.

Construction and maintenance of ice plants, §14-54-703.

**FUNDS —Cont'd****Local governments.**

Reserve funds, §§14-73-101 to 14-73-104.

See LOCAL GOVERNMENTS.

**G****GAMBLING.****Municipal corporations.**

Suppression of gambling.

Duty to enact ordinances, §14-55-103.

**GARBAGE AND REFUSE.****Municipal corporations.**

Sanitation.

Clearance of unsightly and unsanitary conditions of real property, §§14-54-901 to 14-54-904.

See MUNICIPAL CORPORATIONS.

**Sanitation.**

Municipal corporations.

Clearance of unsightly and unsanitary conditions of real property, §§14-54-901 to 14-54-904.

See MUNICIPAL CORPORATIONS.

**GIFTS.****Improvement districts.**

Suburban improvement districts.

Acceptance, §14-92-220.

**Municipal property owners' improvement districts.**

Powers to accept, §14-94-110.

**Property owners' improvement districts.**

Acceptance of gifts, §14-93-111.

**H****HACKNEY COACHES.****Municipal corporations.**

Power to regulate, §14-54-1403.

**HEARINGS.****Improvement districts.**

Municipal districts.

Annexation of territory to district, §14-88-503.

Construction, operation, repair and sale of improvements.

Waterworks, electric plants and sewers.

Sale of waterworks when waterworks and sewer system constructed by same district, §14-91-1002.

## I

**HEARINGS —Cont'd****Improvement districts —Cont'd**

Suburban improvement districts.

See IMPROVEMENT DISTRICTS.

**Municipal property owners' improvement districts.**

Assessments, §14-94-116.

Board of commissioners.

Removal of board members,  
§14-94-108.

Petitions to form district, §14-94-106.

**Property owners' improvement district.**

Annexation of lands outside  
boundaries of district, §14-93-133.

Assessments.

Board of equalization, §14-93-117.

Creation of district.

Hearing on petition, §14-93-106.

**HIGHWAYS.****Districts.**

Suburban improvement districts.

See IMPROVEMENT DISTRICTS.

**Improvement districts.**

Suburban improvement districts.

See IMPROVEMENT DISTRICTS.

**Road improvement districts.**

Collection of taxes.

Enforcement generally, §§14-86-801,  
14-86-802.

Redemption of delinquent  
assessments.

Time, §14-86-1503.

Suburban improvement districts.

See IMPROVEMENT DISTRICTS.

Surplus funds.

Disposition, §14-86-1901.

Taxation.

Enforcement of collection provisions,  
§14-86-801.

**HOSPITALS.****Countries.**

Bond issues.

Bond redemption fund.

Transfer of unexpended balance to  
county hospital building fund,  
§14-72-102.

**HOUSES OF PROSTITUTION.**

**General powers of cities and towns,**  
§14-54-103.

**HOUSING.****Vocational education and rehabilitation.**

Housing construction program,  
§§14-90-902, 14-90-916.

See VOCATIONAL EDUCATION  
AND REHABILITATION.

**ICE PLANTS.****Funds.**

Municipal corporations.

Construction and maintenance of ice  
plants, §14-54-703.

**Municipal corporations.**

Authority to construct, maintain and  
operate, §14-54-703.

Cities of the first and second class,  
§14-54-703.

Construction, maintenance and  
operation.

Funds, §14-54-703.

Funds for construction and  
maintenance, §14-54-703.

**IMPROVEMENT DISTRICTS.****Abandonment.**

Municipal districts.

Construction, operation, repair and  
sale of improvements.

Effect of abandonment of  
improvements, §14-91-101.

**Accounts and accounting.**

Municipal districts.

Water district accounting law.

Applicability to municipal  
improvement districts,  
§14-89-101.

Failure by municipal improvement  
districts to comply,  
§14-89-101.

**Actions.**

Assessments.

Delinquencies.

Counties of more than 150,000  
population.

Costs in actions unaffected,  
§14-86-1302.

Counties with over 75,000  
population.

Collection of tax, §14-86-1208.

In rem proceedings to foreclose lien.

Municipal districts, §§14-90-1401  
to 14-90-1411. See within this  
heading, "Municipal districts."

Suburban improvement districts,  
§14-92-224.

Power to sue and be sued,  
§14-92-221.

Surplus funds.

Contesting right to transfer surplus  
funds, §14-86-1903.

Taxation.

Delinquencies.

Lists of delinquent realty.

Suit for collection of taxes,  
§14-86-1106.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Advertising.**

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien.Sale of foreclosed property,  
§14-90-1409.**Affidavits.**

Municipal districts.

Assessments.

Delinquencies.

Unredeemed land, §14-90-911.

**Airport improvement districts.**

Municipal districts.

Surplus revenue of airport  
improvement districts.

Disposition, §14-89-1304.

**Appeals.**Correction of errors and irregularities  
in formation of districts,  
§14-86-403.

Municipal districts.

Actions involving validity of districts  
or assessments or title to office  
or tax collection, §14-88-504.

Assessments, §14-90-501.

Certification to board of assessors,  
§14-90-502.Correction of erroneous  
descriptions or omitted lands,  
§14-90-601.Finding of council on appeal,  
§14-90-502.Revision of assessments,  
§14-90-602.Sales of property, §§14-90-1201 to  
14-90-1204.Time to prosecute appeal,  
§14-90-1202.Construction, operation, repair and  
sale of improvements.Changing of plans in certain  
cities, §14-91-1105.Continuance of district for purpose  
of making improvements and  
repairs.Readjustment of assessment,  
§14-91-604.Waterworks, electric plants and  
sewers.Sale of waterworks and sewer  
system constructed by same  
district, §§14-91-1001,  
14-91-1006.Suburban improvement districts. See  
within this heading, "Suburban  
improvement districts."**IMPROVEMENT DISTRICTS**

—Cont'd

**Assessments.**Actions. See within this heading,  
"Actions."

Bond issues.

No reduction of assessments after  
issuance, §14-86-602.

Delinquencies.

Counties of more than 150,000  
population.Applicability of provisions to  
certain counties, §14-86-1301.Costs in actions for collection  
unaffected, §14-86-1302.Counties to which preceding  
sections applicable,  
§14-86-1301.Recordation fee abolished,  
§14-86-1304.

Redemption of land.

Fee of county collector,  
§14-86-1303.One receipt issued for lands  
redeemed, §14-86-1303.

Redemption.

Bond issues to redeem,  
§14-86-803.Reassessment not prevented,  
§14-86-803.Possession by purchaser,  
§14-86-1501.Right of purchaser of delinquent  
land to possession,  
§14-86-1501.Time for redemption in road,  
drainage or levee districts,  
§14-86-1503.

Sale of land.

Notice to landowners.

Construction and interpretation,  
§14-86-1402.

Contents, §14-86-1403.

Costs of notice, §14-86-1404.

Effect, §14-86-1405.

Legislative declaration,  
§14-86-1401.Purpose of provisions,  
§14-86-1401.

Required, §14-86-1403.

Mobile or manufactured homes.

Status for purpose of assessment,  
§14-86-102.Municipal districts, §§14-90-101 to  
14-90-1411. See within this  
heading, "Municipal districts."Partition among several owners of  
tract, §14-86-601.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Assessments —Cont'd**

Preliminary expenses.

Levy of tax for preliminary expenses, §14-86-701.

State departments and agencies.

Payment of assessment, §14-86-603.

Exemptions, §14-86-604.

Retroactivity, §14-86-605.

Sale or transfer of land, §14-86-606.

Suburban improvement districts, §14-92-225.

Actions involving validity.

Advancement, §14-92-224.

Additional levies, §14-92-239.

Adjustment, §14-92-226.

Appeal from levy.

Time, §14-92-228.

Assessor.

Duties, §14-92-230.

Benefits and damages, §14-92-227.

Bond issues.

Reassessment of benefits, §14-92-235.

Change of plans.

Material changes.

Reassessments, §14-92-218.

Clerk.

Commission of clerk, §14-92-230.

Deputies may be employed, §14-92-230.

Duties, §14-92-230.

Collection of taxes, §14-92-230.

Collector.

Commissioner, §14-92-230.

Deputies may be employed, §14-92-230.

Delinquencies.

Enforcement of collection, §14-92-232.

Two or more year delinquent assessments.

Reassessment generally, §14-92-101.

Extension of taxes on books, §14-92-230.

Filing with county clerk, §14-92-226.

Hearing of complaints, §14-92-226.

Notice, §14-92-226.

Insufficient tax.

Additional levy, §14-92-231.

Limitation on additional levy, §14-92-231.

Interest on assessments, §14-92-229.

Lien, §14-92-228.

Foreclosure.

Actions advanced, §14-92-224.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Assessments —Cont'd**

Suburban improvement districts

—Cont'd

Reassessments.

Annual reassessment, §14-92-227.

Change of plans.

Material changes, §14-92-218.

Two or more year delinquent assessments.

Generally, §14-92-101.

Time for payment of taxes, §14-92-232.

**Attorneys at law.**

Suburban improvement districts.

Legal services in organizing district, §14-92-214.

**Audits.**

Nonmunicipal improvement districts.

Authorized, §14-86-2001.

Districts in two or more counties, §14-86-2002.

Exceptions to provisions.

Sebastian county, §14-86-2007.

Expenses.

Payment, §§14-86-2005, 14-86-2006.

Payment of expenses, §§14-86-2005, 14-86-2006.

Penalties.

Failure to appear or deliver documents, §14-86-2003.

Petition, §14-86-2001.

Districts in two or more counties, §14-86-2002.

Reports.

Findings, §14-86-2004.

Scope of examination, §14-86-2003.

Sebastian county.

Exception to provisions, §14-86-2007.

**Bond issues.**

Assessments.

Delinquencies.

Redemption with bonds, §14-86-803.

No reduction after issuance of bonds, §14-86-602.

Deeds.

Redemption of delinquent assessment with bonds.

Execution of deed, §14-86-803.

Municipal districts. See within this heading, "Municipal districts."

Payment of improvement taxes with district bonds, §14-86-803.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Bond issues —Cont'd**

Preliminary expenses.

Payment of preliminary expenses by bond issue, §14-86-702.

Redemption of delinquent assessment with bonds, §14-86-803.

Refunding bonds.

Consolidation. See within this heading, "Consolidation."

Suburban improvement districts. See within this heading, "Suburban improvement districts."

Taxation.

Payment of improvement taxes with district bonds.

Reassessment not prevented, §14-86-803.

**Bonds, surety.**

Construction, operation, repair and sale of improvements.

Contractors' bonds.

Actions on bonds, §14-91-106.

Depository to give bond, §14-86-1802.

Penalty for failure to require, §14-86-1801.

Municipal districts.

City improvement collector, §14-88-405.

Collector and treasurer, §14-88-403.

Construction, operation, repair and sale of improvements.

Contractors' bond, §14-91-201.

Treasurer, §14-88-404.

Suburban improvement districts.

Contractors, §14-92-211.

**Borrowing money.**

Municipal districts. See within this heading, "Municipal districts."

**Chancery courts.**

Consolidation.

Jurisdiction over refunding bonds and reorganization of districts, §14-87-103.

**Collection of taxes.**

Levee, drainage and road districts.

Bondholders' remedies, §14-86-801.

Enforcement of collection, §14-86-801.

Receiver not appointed, §14-86-801.

Municipal, bridge, suburban and road maintenance improvement districts.

Bondholders' remedies, §14-86-802.

Enforcement of collection, §14-86-802.

Receiver not appointed, §14-86-802.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Commissioners.**

Destruction of section corners.

Reestablishment of corners.

Duty to cause reestablishment, §14-86-503.

Municipal districts. See within this heading, "Municipal districts."

Suburban improvement districts. See within this heading, "Suburban improvement districts."

**Conflicts of interest.**

Municipal districts.

Board of improvements, §§14-88-309, 14-88-310.

Suburban improvement districts.

Commissioners, §14-92-208.

**Consolidation.**

Allocation of indebtedness of original district, §14-87-109.

Assumption of debts of subsidiary district, §14-87-109.

Construction and interpretation.

Existing laws not repealed, §14-87-101.

Court to provide facilities for effecting purposes of district, §14-87-105.

Definitions, §14-87-102.

Effectuation, §14-87-107.

Expenses, §14-87-105.

Inclusion of parts of certain districts with other districts, §14-87-107.

Jurisdiction of chancery court, §14-87-103.

Liens.

Recordation where land located, §14-87-104.

Overdue taxes of subsidiary district.

Payment, §14-87-110.

Subrogation, §14-87-110.

Recordation in each county where district located in more than one county, §14-87-104.

Refunding bonds.

Jurisdiction of chancery court, §14-87-103.

Reorganization of governing body of district, §14-87-106.

Use to refund indebtedness of subsidiary districts, §14-87-108.

Reorganization of governing body of district, §14-87-106.

Suburban improvement districts.

Joint operation of contiguous districts. See within this heading, "Suburban improvement districts."



**IMPROVEMENT DISTRICTS**

—Cont'd

**Construction and interpretation.**

Consolidation.

Existing laws not repealed,  
§14-87-101.Correction of errors and irregularities  
in formation of districts,  
§14-86-401.

Destruction of section corners.

Applicability of act, §14-86-501.

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien, §14-90-1402.

Investments.

Applicability of 1949 act,  
§§14-90-102, 14-90-103.

Suburban improvement districts.

Applicability of provisions,  
§14-92-202.**Contractors.**

Municipal districts.

Construction, operation, repair and  
sale of improvements,  
§14-91-201.Suburban improvement districts,  
§§14-92-211, 14-92-213.**Contracts.**

Municipal districts.

Board of improvements.

Conflicts of interest, §14-88-309.

Power to contract, §14-88-210.

**Conveyances.**

Municipal districts.

Winding up affairs, §14-88-604.

**Corners.**Destruction of section corners,  
§§14-86-501 to 14-86-504. See  
within this heading, "Destruction  
of section corners."**Correction of errors and  
irregularities in formation of  
districts, §14-86-402.**

Appeal, §14-86-403.

Existing laws not repealed,  
§14-86-401.**Costs.**

Assessments.

Delinquencies.

Counties of more than 150,000.

Effect on costs in actions for  
collection of assessments,  
§14-86-1302.

Sale of land.

Notice to landowners,  
§14-86-1404.**IMPROVEMENT DISTRICTS**

—Cont'd

**Counties.**Counties to which sections applicable,  
§14-86-1202.

Definitions, §14-86-1201.

Delinquent assessments.

Action for collection of tax.

Fee of clerk, §14-86-1208.

Limitation of action, §14-86-1208.

Certificate of filing delinquent list,  
§14-86-1206.Grounds for inclusion on delinquent  
list, §14-86-1205.

Lists in such counties.

Failure of collector to certify list.

Penalty, §14-86-1203.

Grounds for inclusion on  
delinquent list, §14-86-1205.

Redemption of lands, §14-86-1207.

Penalties.

Addition of penalty and costs to  
tax, §14-86-1206.Time when taxes in such districts  
become delinquent, §14-86-1204.When taxes become delinquent,  
§14-86-1204.

Municipal districts.

Assessments.

Collection of assessments.

Adding penalty to delinquent  
installments, §14-90-909.

Of more than 150,000 population.

Assessments.

Delinquencies, §§14-86-1301 to  
14-86-1304. See within this  
heading, "Assessments."

Of more than 75,000 population.

Applicability of sections,  
§14-86-1202.

Redemption of lands.

Fees of clerk, §14-86-1207.

Surplus funds.

Distribution of surplus funds of  
certain districts among counties,  
§14-86-1902.**County clerks.**

Taxation.

Extending tax annually, §§14-86-901  
to 14-86-905. See within this  
heading, "Extending tax  
annually."**Deeds.**

Assessments.

Delinquencies.

Redemption with bond issues.

Execution of deed, §14-86-803.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Deeds —Cont'd**

Municipal districts.

Assessments.

Redemption.

Certificate of purchase must be  
filed to make deed,  
§14-90-1303.Execution of deed after  
expiration of redemption  
period, §14-90-1303.**Definitions.**Consolidation of districts, §14-87-102.  
Counties with over 75,000 population.Delinquent assessments,  
§14-86-1201.

Municipal districts.

Advancement of funds by  
municipalities, §14-89-801.

Assessments, §14-90-101.

Construction, operation, repair and  
sale of improvements.Levee or flood control districts,  
§14-91-302.Property owners' improvement  
districts, §14-93-103.Suburban improvement districts,  
§14-92-201.

Taxation.

Delinquencies.

Real property, §14-86-1101.

**Depositories.**

Bonds, surety, §14-86-1802.

Penalty for failure to require,  
§14-86-1801.**Destruction of section corners.**

Applicability of act, §14-86-501.

Commissioners.

Reestablishment of corners.

Duty to cause reestablishment,  
§14-86-503.

Failure to replace.

Each failure constitutes separate  
offense, §14-86-502.

Penalties, §14-86-502.

Reestablishment of corners.

Commissioner's duties to cause,  
§14-86-503.

Relocation.

Duties, §14-86-504.

Method, §14-86-504.

Separate offenses for failure to replace  
each corner, §14-86-502.**Dissolution.**

Municipal districts.

Reversion of surplus funds,  
§14-89-1305.**IMPROVEMENT DISTRICTS**

—Cont'd

**Drainage districts.**

Collection of taxes.

Enforcement generally, §14-86-801.

Redemption.

Time, §14-86-1503.

Surplus funds.

Disposition, §14-86-1901.

**Electric light improvement districts.**

Municipal districts.

Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers. See within this  
heading, "Municipal districts."Operation of waterworks, gas or  
electric light works by city or  
town council, §14-91-402.School district tax, §§14-89-601 to  
14-89-603. See within this  
heading, "Municipal districts."Water and electric light  
improvement districts. See  
within this within this heading,  
"Municipal districts."**Electric street light districts.**

Municipal districts.

Borrowing money.

Authority of certain districts to  
borrow money, §14-89-203.**Eminent domain.**

Municipal districts.

Construction, operation, repair and  
sale of improvements,  
§14-91-104.Levee or flood control districts,  
§§14-91-308, 14-91-309.Suburban improvement districts,  
§14-92-222.Joint operation of contiguous  
districts, §14-92-310.Purposes for eminent domain,  
§14-92-222.**Extending tax annually.**

Applicability of provisions, §14-86-901.

Commission to county clerk,  
§14-86-902.Commission to tax collector,  
§14-86-904.

County clerk.

Commission, §14-86-902.

Deputies may be employed,  
§14-86-903.

Deputy county clerks.

Additional deputy clerks,  
§14-86-903.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Extending tax annually** —Cont'd

Deputy county clerks —Cont'd

County clerk authorized to employ,  
§14-86-903.

Deputy tax collectors.

Additional deputies, §14-86-905.

Scope of provisions, §14-86-901.

Tax collector.

Commission, §14-86-904.

Deputy tax collectors.

Additional deputies, §14-86-905.

**Fees.**

Assessments.

Delinquencies.

Counties of more than 150,000.

Abolition of fee for recordation  
of delinquent list,  
§14-86-1304.Redemption of land,  
§14-86-1302.

Counties with over 75,000 population.

Delinquent assessments.

Clerk's fees, §§14-86-1207,  
14-86-1208.

Municipal districts.

Assessments.

Collector and treasurer fees,  
§14-90-913.

Delinquencies.

Clerk's fees for filing  
delinquencies, §14-90-912.

Unredeemed land, §14-90-911.

Extension of annual installments.

Clerk's fee, §14-90-913.

**Flood control districts.**

Municipal districts.

Construction, operation, repair and  
sale of improvements.

Levee and flood control districts.

See within this heading,  
"Municipal districts."**Foreclosures.**

Municipal districts.

Assessments.

In rem proceedings to foreclose  
liens, §§14-90-1401 to  
14-90-1411. See within this  
heading, "Municipal districts."**Forfeitures.**

Sale of forfeited lands.

Failure of title.

Amount of refund limited,  
§14-86-1702.Claimant of refund chargeable  
with timber or minerals  
removed, §14-86-1703.**IMPROVEMENT DISTRICTS**

—Cont'd

**Forfeitures** —Cont'd

Sale of forfeited lands —Cont'd

Failure of title —Cont'd

Refund of moneys received,  
§14-86-1701.**Formation of districts.**Correcting errors and irregularities in  
formation, §14-86-402.

Appeals, §14-86-403.

Existing laws not repealed,  
§14-86-401.

Notice.

Applicability of provisions,  
§14-86-302.

Definition of "address," §14-86-301.

Requirements, §14-86-303.

**Gas works.**

Municipal districts.

Operation of waterworks, gas or  
electric light works by city or  
town council, §14-91-402.**Gifts.**

Suburban improvement districts.

Acceptance, §14-92-220.

**Hearings.**

Municipal districts.

Annexation of territory to district,  
§14-88-503.Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers.Sale of waterworks when  
waterworks and sewer  
system constructed by same  
district, §14-91-1002.Street improvement districts. See  
within this heading, "Municipal  
districts."Suburban improvement districts. See  
within this heading, "Suburban  
improvement districts."**Injunctions.**

Municipal districts.

Construction, operation, repair and  
sale of improvements,  
§14-91-105.**Interest.**

Suburban improvement districts.

Assessments, §14-92-229.

Bond issues, §14-92-234.

Two or more year delinquent  
assessments, §14-92-101.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Jurisdiction.**

Consolidation.

Chancery court jurisdiction over  
refunding bonds and  
reorganization of districts,  
§14-87-103.

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien, §14-90-1405.

**Levee improvement districts.**

Collection of taxes.

Enforcement generally, §14-86-801.

Municipal districts.

Construction, operation, repair and  
sale of improvements.

Levee or flood control districts.

See within this heading,  
"Municipal districts."

Redemption.

Time, §14-86-1503.

Surplus funds.

Disposition, §14-86-1901.

**Liens.**

Consolidation.

Recordation where land located,  
§14-87-104.

Land forfeited to state for general  
taxes.

Enforcement of district tax lien,  
§14-86-1601.

Municipal districts.

Assessments, §14-90-805.

In rem proceedings to foreclose  
liens, §§14-90-1401 to  
14-90-1411. See within this  
heading, "Municipal districts."

Construction, operation, repair and  
sale of improvements.

Continuance of district for purpose  
of making improvements and  
repairs.

Levy of assessments,  
§14-91-602.

Suburban improvement districts,  
§14-92-235.

**Limitation of actions.**

Counties with over 75,000 population.

Delinquent assessments.

Action for collection of tax,  
§14-86-1208.

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien.

Redemption, §14-90-1301.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Limitation of actions —Cont'd**

Taxation.

Delinquencies.

Lists of delinquent realty.

Suit for collection of taxes,  
§14-86-1106.

**Mandamus.**

Municipal districts.

Enforcement of act by mandamus,  
§14-88-101.

Suburban improvement districts.

Bond issues.

Enforcement of levy and collection  
of tax by mandamus,  
§14-92-235.

**Manufactured homes.**

Status as property, §14-86-102.

**Maps and plats.**

Municipal districts.

Assessments.

Validity of land descriptions based  
on plat in office of municipal  
clerk, §14-90-301.

**Mobile homes.**

Status as property, §14-86-102.

**Mortgages and deeds of trust.**

Municipal districts.

Water and light plants.

Authority to mortgage,  
§14-89-202.

**Municipal districts.**

Abandonment of improvements,  
§14-91-101.

Accounts and accounting.

Water district accounting law.

Applicability to municipal  
improvement districts,  
§14-89-101.

Failure by municipal improvement  
districts to comply,  
§14-89-101.

Actions.

Assessments. See within this  
subheading, "Assessments."

Construction, operation, repair and  
sale of improvements.

Sale of waterworks when  
waterworks and sewer system  
constructed by same district,  
§14-91-1006.

Power to sue and be sued,  
§14-88-210.

Advancement of funds by  
municipalities.

Conditions precedent, §14-89-802.

Definitions, §14-89-801.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts** —Cont'd

- Advancement of funds by municipalities —Cont'd
- Grounds, §14-89-802.
- Method, §14-89-803.
- Procedure, §14-89-803.
- Airport improvement districts.
- Surplus revenue of airport improvement districts.
- Disposition, §14-89-1304.
- Annexation of territory to district.
- Assessments, §14-88-503.
- Hearings, §14-88-503.
- Notice, §14-88-503.
- Ordinance involving, §14-88-503.
- Petition, §14-88-503.

**Annual financial settlements.**

- Adjustment, §14-89-1103.
- Contents, §14-89-1102.
- Examination, §14-89-1103.
- Filing, §14-89-1102.
- Penalties.
- Failure to make, §14-89-1101.

**Appeals.**

- Actions involving validity of districts or assessments or title to office or tax collection, §14-88-504.
- Assessments. See within this subheading, "Assessments."
- Construction, operation, repair and sale of improvements.
- Continuance of district for purpose of making improvements and repairs.
- Readjustment of assessment, §14-91-604.

**Assessments.**

- Actions.
- Correcting or invalidating assessment, §14-90-804.
- Enforcing payment, §14-90-102.
- Decree of sale of property, §14-90-1101.
- Involving validity, §14-88-504.
- Unredeemed land.
- Notice of actions, §14-90-911.
- Annexation of territory to district, §14-88-503.
- Annual readjustment, §14-90-603.
- Appeals, §14-90-501.
- Certification to board of assessors, §14-90-502.
- Correction of erroneous descriptions or omitted lands, §14-90-601.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts** —Cont'd

- Assessments —Cont'd
- Appeals —Cont'd
- Finding of council on appeal, §14-90-502.
- Revision of assessments, §14-90-602.
- Sale of property, §§14-90-1201 to 14-90-1204.
- Applicability of 1949 act, §14-90-102.
- Districts created prior to July 1, 1952, §14-90-103.
- Apportionment of assessed value where district line crosses parcel of land for determination of sufficiency of signers, §14-88-205.
- Authority of city or town council to make assessments, §14-88-202.
- Authority of sections, §14-88-201.
- Board of assessments.
- Appointment, §14-90-201.
- Certification to board, §14-90-502.
- Compensation of assessors, §14-90-203.
- Number of members, §14-90-201.
- Oath of office, §14-90-202.
- Bond issues.
- Reassessment, §14-89-302.
- Book, §14-90-401.
- Changes in assessments, §14-90-906.
- Collection of assessments.
- Changes in assessments, §14-90-906.
- Delinquencies.
- Action to enforce payment, §14-90-102.
- Appeals from decree of sale, §§14-90-1201 to 14-90-1204.
- Attachment of exhibits to complaint, §14-90-1002.
- Certificates of purchase for sale of property, §14-90-1104.
- Certification of list, §14-90-905.
- Complaint, §14-90-102.
- Court always open to enforce collection of delinquent assessments, §14-90-1001.
- Decrees in actions to enforce payment, §14-90-1006.
- Defendants in actions to enforce payment, §14-90-1004.
- Fees of clerk for filing delinquencies, §14-90-912.
- In rem proceedings to foreclose liens, §§14-90-1401 to 14-90-1411.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Assessments —Cont'd

Collection of assessments —Cont'd

Delinquencies —Cont'd

Joinder of parties in actions to  
enforce payment,  
§14-90-1005.

List, §14-90-1403.

List of lands delinquent certified  
to clerk of chancery court,  
contents, §14-90-908.Parties in action to enforce  
payment, §§14-90-1004,  
14-90-1005.Payment for sales of property,  
§14-90-1103.

Penalty, §14-90-1403.

Penalty added to delinquent  
installments, §14-90-909.Publication of notice of action to  
enforce payment,  
§14-90-1003.

Sale of property, §14-90-1101.

Deputy clerk.

Employment authorized,  
§14-90-914.

Salary, §14-90-914.

Deputy collector.

Employment authorized,  
§14-90-915.

Salary, §14-90-915.

Extension of assessment on tax  
books, §14-90-906.

Fees.

Collector's fee, §14-90-913.

Extension of annual  
installments, §14-90-913.Money paid over less fee,  
§14-90-904.

Treasurer, §14-90-913.

Unredeemed land, §14-90-911.

Form of notice for collection of  
assessment, §14-90-903.

Misdemeanors, §14-90-901.

Money paid over less fees,  
§14-90-904.

Notice, §14-90-903.

Penalties, §14-90-901.

Adding penalty to delinquent  
installments, §14-90-909.Redemption for remission of  
taxes and penalties,  
§14-90-910.

Redemption, §14-90-910.

Issuance of certificate,  
§14-90-910.**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Assessments —Cont'd

Collection of assessments —Cont'd

Redemption —Cont'd

Notation, §14-90-910.

Remission of taxes and  
penalties, §14-90-910.

Sale of property.

Compensation of commissioner,  
§14-90-1108.In rem proceedings to foreclose  
property, §§14-90-1409,  
14-90-1410.No bid made, procedure,  
§14-90-1107.Reoffer of property upon failure  
to pay bid for property,  
§14-90-1105.

Rules for sale, §14-90-1102.

Subsequent offers to sell upon  
initial failure to sell,  
§14-90-1106.

Second installments, §14-90-907.

Distribution of funds,  
§14-90-907.Payment of delinquent  
installments, §14-90-907.Payment over to county  
treasurer, §14-90-907.

Unredeemed land.

Abstracter's list of names and  
addresses, §14-90-911.

Affidavits, §14-90-911.

Certified list prepared,  
§14-90-911.

Notice of action, §14-90-911.

Collector.

Copy of assessments delivered to  
collector, §14-90-902.Monthly payments to treasurer,  
§14-90-916.

Construction and interpretation.

Applicability of 1949 act,  
§14-90-102.Construction, operation, repair and  
sale of improvements.Continuance of district for purpose  
of making improvements and  
repairs, §14-91-601.Law providing for original  
assessments to govern,  
§14-91-605.Limitation on additional  
assessment for maintenance  
and repair, §14-91-603.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts** —Cont'd

Assessments —Cont'd

Construction, operation, repair and sale of improvements —Cont'd

Continuance of district for purpose of making improvements and repairs —Cont'd

Readjustment of assessments, §14-91-604.

Injunction in case of illegal assessments, §14-91-105.

Waterworks, electric plants and sewers, §14-89-1302.

Copies.

Certified copy of assessment and ordinance given to county clerk, §14-90-906.

Delivery of copy of assessment to collector, §14-90-902.

Ordinances.

Certified copy of ordinance, §14-90-902.

Definitions, §14-90-101.

Delinquencies.

Actions to enforce payment, §14-90-1002.

Court always open to enforce collection of delinquent assessments, §14-90-1001.

Decrees, §14-90-1006.

Defendants, §14-90-1004.

Joinder of parties, §14-90-1005.

Parties, §§14-90-1004, 14-90-1005.

Publication of notice of suit, §14-90-1003.

Certification of list of delinquencies, §14-90-905.

Complaint, §14-90-1002.

Attachment of exhibits, §14-90-1002.

Fees of clerk for filing, §14-90-912.

In rem proceedings to foreclose liens, §§14-90-1401 to 14-90-1411.

List, §14-90-1403.

List of lands delinquent certified to clerk of chancery court, §14-90-908.

Contents, §14-90-908.

Payment of delinquent installments, §14-90-907.

Penalty, §14-90-1403.

Penalty added to delinquent installments, §14-90-909.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts** —Cont'd

Assessments —Cont'd

Delinquencies —Cont'd

Sale of property, §14-90-1002.

Appeals, §§14-90-1201 to 14-90-1204.

Certificates of purchase, §14-90-1104.

Compensation of commissioner for sale, §14-90-1108.

Decree for sale of property, §14-90-1101.

In rem proceedings to foreclose lien, §§14-90-1409, 14-90-1410.

Payment, §14-90-1103.

Reoffer upon failure to pay bid, §14-90-1105.

Rules for sale, §14-90-1102.

Unredeemed land.

Abstracter's list of names and addresses, §14-90-911.

Affidavits, §14-90-911.

Certified list prepared, §14-90-911.

Notice, §14-90-911.

Descriptions of lands.

Validity when based on plat in office of municipal clerk, §14-90-301.

Districts created prior to July 1, 1952.

Applicability of 1949 act, §14-90-103.

Duties of assessors, §14-90-401.

Erroneous descriptions.

Correction, §14-90-601.

Excessive assessments.

Reduction, §14-90-604.

Cumulative nature of section, §14-90-604.

Extension of assessment on tax books, §14-90-906.

Filing.

Notice of filing, §14-90-402.

Foreclosure of liens by in rem proceedings.

Generally, §§14-90-1401 to 14-90-1411.

Forms.

Notice for collection of assessment, §14-90-903.

In rem proceedings to foreclose lien. Construction and interpretation, §14-90-1402.

Continuances, §14-90-1409.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Assessments —Cont'd

In rem proceedings to foreclose lien

—Cont'd

Cumulative effect of act,  
§14-90-1402.

Decree for sale, §14-90-1409.

Jurisdiction, §14-90-1405.

Legislative declaration.

Purpose of provisions,  
§14-90-1401.

List of property.

Recordation, §14-90-1401.

Redemptions, §14-90-1401.

Nature of proceedings,  
§14-90-1406.

Notice, §14-90-1408.

Property against which decree  
enforceable, §14-90-1406.Property included in suit,  
§14-90-1407.Purpose of provisions,  
§14-90-1401.

Recordation.

List of property and  
redemptions, §14-90-1404.

Redemption, §14-90-1411.

Fee of clerk, §14-90-1411.

Limitation of actions,  
§14-90-1301.

Sale of property.

Advertising, §14-90-1409.

Decree, §14-90-1409.

Deed, §14-90-1409.

Effect, §14-90-1409.

Plaintiff may be purchaser when  
there is no other purchaser,  
§14-90-1410.Purchase by plaintiff when no  
other purchaser available,  
§14-90-1410.Separability of provisions,  
§14-90-1402.

Time for trial, §14-90-1409.

Trial.

Continuance, §14-90-1409.

Time for trial, §14-90-1409.

Installment payments.

Ordinance, §14-90-801.

Form of ordinance, §14-90-802.

Publication, §14-90-803.

Payable in annual installments,  
§14-90-801.

Second installments.

Collection, §14-90-907.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Assessments —Cont'd

Insufficient tax.

Additional levy, §14-90-701.

Liens, §§14-90-805, 14-91-602.

In rem proceedings to foreclose.

Generally, §§14-90-1401 to  
14-90-1411.Method of making corrections of  
erroneous descriptions or  
omitted lands, §14-90-601.

Notice.

Collection of assessment.

Form, §14-90-903.

Correction of erroneous  
descriptions or omitted lands,  
§14-90-601.In rem proceedings to foreclose  
lien, §14-90-1408.Revision of assessments,  
§14-90-602.

Omitted lands, §14-90-601.

Ordinances.

Certified copy of ordinance,  
§14-90-902.

County clerk, §14-90-906.

Installment payments, §14-90-801.

Form of ordinance, §14-90-802.

Publication of ordinance,  
§14-90-803.

Penalties.

Collection of assessments,  
§14-90-901.Adding penalty to delinquent  
assessment, §14-90-909.

Plats.

Validity of land descriptions based  
on plat in office of municipal  
clerk, §14-90-301.

Private improvements.

Allowance of set-off for private  
improvements, §14-90-403.

Purposes, §14-88-202.

Railroads.

Property subject to assessment,  
§14-90-302.

Readjustment.

Annual readjustment, §14-90-603.

Redemption.

Deeds.

Certificate of purchase to be  
filed, §14-90-1303.

Evidentiary effect, §14-90-1303.

Execution of deed after  
expiration of period,  
§14-90-1303.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Assessments —Cont'd

Redemption —Cont'd

Deeds —Cont'd

Form, §14-90-1303.

Validity, §14-90-1303.

Effect, §14-90-910.

In rem proceedings to foreclose  
lien, §§14-90-1301,  
14-90-1411.Waiver of right of redemption,  
§14-90-1302.

Effect, §14-90-1302.

Reduction of excessive assessments,  
§14-90-604.Cumulative nature of section,  
§14-90-604.

Revision of assessments, §14-90-602.

Appeals, §14-90-602.

Notice, §14-90-602.

Sale of property, §14-90-1002.

Appeals, §14-90-1201.

Advancement of cause,  
§14-90-1201.Supreme court decision,  
§14-90-1204.Time of filing transcript,  
§14-90-1203.Time to prosecute appeal,  
§14-90-1202.Transcripts, contents,  
§14-90-1203.Transcripts, time of filing,  
§14-90-1203.Certificates of purchase,  
§14-90-1104.Compensation of commissioner for  
sale, §14-90-1108.Contents of transcripts,  
§14-90-1203.Time for taking appeal,  
§14-90-1203.Direction for sale of property,  
§14-90-1101.

Failure to sell.

Subsequent offer, §14-90-1106.

In rem proceedings to foreclose  
lien, §§14-90-1409,  
14-90-1410.

No bids made.

Power of district to hold and  
convey real property,  
§14-90-1107.

Sale to district, §14-90-1107.

Payment, §14-90-1103.

Failure to pay bid, §14-90-1105.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Assessments —Cont'd

Sale of property —Cont'd

Reoffer upon failure to pay bid,  
§14-90-1105.

Rules for sale, §14-90-1102.

Subsequent offers to sell property  
which fails to sell,  
§14-90-1106.

School districts.

Property subject to assessment,  
§14-90-303.Signing petitions on behalf of  
school district, §14-90-303.

Set-off.

Private improvements, §14-90-403.

Street improvement districts. See  
within this subheading, "Street  
improvement districts."

Treasurer.

Collector to pay treasurer  
monthly, §14-90-916.Water and electric light  
improvement districts.

School district tax.

Method of assessing property of  
district for school taxes,  
§14-89-603.

Assessors.

Oath of office, §14-88-407.

Attorneys at law.

City attorney, §14-88-406.

Board of improvements.

Appointment of members,  
§14-88-301.

Chairman, §14-88-306.

Election, §14-88-306.

Combining boards, §14-88-311.

Compensation.

No compensation for services,  
§14-88-308.Conflicts of interest, §§14-88-309,  
14-88-310.

Hearings.

Removal of members, §14-88-305.

Meetings.

Quorum, §14-88-307.

No compensation for services,  
§14-88-308.

Number of members, §14-88-301.

Oath of office, §14-88-302.

Ordinance creating district.

Appointment of members,  
§14-88-301.

Petition to fill vacancy, §14-88-304.

Quorum, §14-88-307.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Board of improvements —Cont'd

Removal of members, §14-88-305.

Vacancies, §14-88-303.

Filling, §14-88-303.

Petition of property owners,  
§14-88-304.

Bond issues.

Authority to issue, §14-89-201.

Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers.Sale of waterworks when  
waterworks and sewer  
system constructed by same  
district, §14-91-1005.

Default in payment, §14-89-302.

Distribution of collection,  
§14-89-302.

Funds raised for operating expenses.

Use for payment of bonds,  
§14-89-301.

Funds recovered in litigation.

Use for payment of bonds,  
§14-89-301.

Lien.

Foreclosure of lien, §14-89-302.

Payments.

Profits from electric plant,  
waterworks or sewer system  
to pay, §§14-89-901 to  
14-89-908.Surplus funds of new district,  
§14-89-1302.Use of funds recovered in  
litigation or raised for  
operating expenses for  
payment, §14-89-301.

Penalties.

Improper use of proceeds,  
§14-89-201.

Proceeds.

Improper use, §14-89-201.

Penalty, §14-89-201.

Profits from electric plants,  
waterworks or sewer systems to  
pay.

Accounts.

Deposit of funds in account for  
payment of bonds,  
§14-89-904.Depreciation and reserve  
accounts to be provided for,  
§14-89-905.**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Bond issues —Cont'd

Profits from electric plants,  
waterworks or sewer systems to  
pay —Cont'dAllocation of profits to various  
districts and for municipal  
expenses, §14-89-907.Payments to districts and  
municipalities after  
allocation, §14-89-908.Applicability of provisions,  
§14-89-901.Approval of use of funds for  
payment of bonds and  
obligations, §14-89-906.Authority to use to pay,  
§14-89-903.Cumulative nature of provisions,  
§14-89-902.Deposit of funds in account for  
payment of bonds, §14-89-904.

Expenses of municipalities.

Allocation of profits to various  
districts and for municipal  
expenses, §14-89-907.Improvements to be provided for,  
§14-89-905.Legislative declaration,  
§14-89-902.Payments to districts and  
municipality.Allocation of amounts paid,  
§14-89-908.

Scope of provisions, §14-89-901.

Use of funds for payment of bonds  
and other obligations of  
districts or municipalities,  
§14-89-903.

Approval of use, §14-89-906.

Reassessment, §14-89-302.

Refunding bonds.

Authorized, §14-89-402.

Issuance, §14-89-402.

Legislative declaration.

Purpose, §14-89-401.

Methods of raising revenue,  
§14-89-403.Negotiable instruments,  
§14-89-404.

Purpose, §14-89-401.

Revenue for refunding bonds.

Method of raising, §14-89-403.

Security, §14-89-404.

Terms and conditions, §14-89-404.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Bond issues —Cont'd

Surplus funds.

Payment on bonds of new district,  
§14-89-1302.

Taxation.

Collection of taxes, §14-89-302.

Bonds, surety.

City improvement collector,  
§14-88-405.

Collector and treasurer, §14-88-403.

Construction, operation, repair and  
sale of improvements.

Contractors' bonds, §14-91-201.

Treasurer, §14-88-404.

Borrowing money.

Authority, §14-89-201.

Construction, operation, repair and  
sale of improvements.

Planning.

Change of plans, §14-91-1106.

Electric street light districts.

Authority of certain districts to  
borrow money, §14-89-203.

Boundaries.

Formation outside boundaries  
authorized, §14-88-201.

City attorney.

Compensation, §14-88-406.

Duties, §14-88-406.

City improvement collector.

Appointment in certain cities,  
§14-88-405.Former collecting officers to turn  
books over to improvement  
collectors, §14-88-405.Penalty for noncompliance,  
§14-88-405.

Office to be maintained, §14-88-405.

City limits.

Improvements outside limits,  
§14-88-502.

City planning commission.

Recommendations.

Rejection of district when  
improvement does not  
conform to plan, §14-88-208.

Collection of taxes.

Enforcement of collection generally,  
§14-86-802.

Collector.

Appointment, §14-88-403.

Bonds, surety, §14-88-403.

Exceptions in certain cities,  
§14-88-403.**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Collector —Cont'd

City improvement collector,  
§14-88-405.Improper use of funds by collector or  
subordinate official, §14-88-402.Same person may be collector of  
different districts.Money to be kept separately,  
§14-88-403.

Commissioners.

Appointment, §14-88-301.

Construction, operation, repair and  
sale of improvements.Control of construction by  
commissioners, §14-91-201.Compensation for preliminary work of  
organization, §14-88-209.Construction, operation, repair and  
sale of improvements.Abandonment of improvements,  
§14-91-101.

Bids.

Acceptance or rejection,  
§14-91-201.

Advertising for bids, §14-91-201.

Rejection, §14-91-201.

Bonds, surety of contractors,  
§14-91-201.

Actions on bonds, §14-91-106.

Change of plans in certain cities.

Appeals.

Plans exceeding cost limit,  
§14-91-1105.Applicability of provisions,  
§14-91-1101.

Authorized, §14-91-1102.

Borrowing money, §14-91-1106.

Cost estimate, §14-91-1103.

Cost limits.

Plans exceeding cost limit,  
§14-91-1105.Plans not exceeding cost limit,  
§14-91-1104.

Petitions.

Plans exceeding cost limit,  
§14-91-1105.Plans exceeding cost limit,  
§14-91-1105.Plans not exceeding cost limit,  
§14-91-1104.Power of board of improvements,  
§14-91-1102.

Revised plans, §14-91-1103.

Scope of provisions, §14-91-1101.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts** —Cont'd

- Construction, operation, repair and sale of improvements —Cont'd
- Commissioners to control construction, §14-91-201.
- Continuance of district for purpose of making improvements and repairs, §14-91-601.
- Assessments, §14-91-601.
  - Law providing for original assessments to govern, §14-91-605.
  - Lien on levy of assessment, §14-91-602.
  - Limitation on additional assessment for maintenance and repair, §14-91-603.
  - Readjustment, §14-91-601.
- Ordinance, §14-91-601.
- Petition, §14-91-601.
- Contractors.
  - Appointment of agents, §14-91-201.
  - Bonds, surety, §14-91-201.
  - Actions on bonds, §14-91-106.
  - Purchases of material, §14-91-201.
- Eminent domain, §14-91-104.
- Engineers.
  - Employment, §14-91-101.
  - Expenses, §14-91-101.
- Exemption of commissioners from liability, §14-91-107.
- Extension and improvement of water plants in certain cities, §14-91-801.
- Assistance by city to such improvement districts, §14-91-802.
- Sale of waterworks when waterworks and sewer system constructed by same district.
  - Actions involving sale advanced for hearing, §14-91-1006.
  - Appeals, actions involving sale advanced for hearing, §§14-91-1002, 14-91-1006.
- Appraisal, §14-91-1001.
- Bond issues, remaining bonds and indebtedness of district, §14-91-1005.
- Effect of sale, §14-91-1004.
- Forfeiture of corporate entity not worked, §14-91-1004.
- Hearing, §14-91-1002.
- Lien against property sold, §14-91-1003.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts** —Cont'd

- Construction, operation, repair and sale of improvements —Cont'd
- Extension and improvement of water plants in certain cities —Cont'd
  - Sale of waterworks when waterworks and sewer system constructed by same district —Cont'd
    - Notice, §14-91-1001.
    - Petition, §14-91-1002.
    - Purchase of waterworks, §14-91-1003.
    - Resolution for sale, §14-91-1002.
    - Review, §14-91-1002.
- Formation of new district to enlarge or reconstruct works, waterworks or electric light plants, §14-91-701.
- Injunctions.
  - Clerk not to be enjoined, §14-91-105.
  - Illegal assessments as grounds for injunction, §14-91-105.
- Levee or flood control districts.
  - Acquisition of lands, §§14-91-307 to 14-91-309.
- Applicability of act, §14-91-301.
- Assistance by municipality, §14-91-305.
- Authorized, §14-91-303.
- County land.
  - Authorization to use, §14-91-306.
- Defined, §14-91-302.
- Eminent domain.
  - Board of appraisers, §14-91-309.
  - Procedure, §14-91-309.
  - Rights of way, §14-91-308.
- Federal government.
  - Agreements with, §14-91-304.
- Municipal assistance, §14-91-305.
- Powers of district, §14-91-303.
- Right of entry.
  - County land, §14-91-306.
- Rights of way.
  - Eminent domain, §14-91-308.
  - Failure to obtain by agreement, §14-91-308.
  - Right to acquire, §14-91-307.
- Rural improvement districts unaffected, §14-91-301.
- United States.
  - Agreements with federal government, §14-91-304.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

- Construction, operation, repair and sale of improvements —Cont'd
- Liability of commissioners. Exemption, §14-91-107.
- Order in electric light plants. Operation pending retirement of bonds, §14-91-401.
- Paving streets.
  - Excavations in street after completion of paving, §14-91-103.
  - Notice to utility companies before paving, §14-91-103.
- Planning, §14-89-201.
  - Change of plan in certain cities, §§14-91-1101 to 14-91-1106.
  - State health officer to approve plans for waterworks and sewer improvements, §14-91-102.
- Rates.
  - Operation of water and electric light plants in certain cities pending retirement of bonds, §14-91-401.
- Remedies.
  - Legal remedies, §14-91-105.
- Reports.
  - Operation of water and electric light plants in certain cities pending retirement of bonds, §14-91-401.
- State health officer to approve plans for waterworks and sewer improvements, §14-91-102.
- Waterworks, electric plants and sewers.
  - Additional territory, §14-91-501.
  - Annexation of territory, §14-91-502.
  - Appeals, §14-91-502.
  - Assessments.
    - Appointment of assessors, §14-91-503.
    - Lien of assessment, §14-91-503.
    - Ordinance levying assessment, §14-91-503.
    - Reassessments, §14-91-503.
  - Borrowing rate, §14-91-501.
  - Connection of sewers to lands outside district, §14-91-901.
  - Payment for services, §14-91-902.
  - Recordation, §14-91-903.
  - Right of refusal, §14-91-902.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

- Construction, operation, repair and sale of improvements —Cont'd
- Waterworks, electric plants and sewers —Cont'd
  - Connection of sewers to lands outside district —Cont'd
  - Terms for connection, §14-91-902.
- Extension and improvement of water plants in certain cities, §14-91-801.
  - Assistance by city to such improvement districts, §14-91-802.
- Formation of new district to enlarge or reconstruct works, waterworks or electric light plants, §14-91-701.
- Hearing on petition, §14-91-502.
- Lien of assessment, §14-91-503.
- Notice, §14-91-501.
- Ordinances, §14-91-501.
  - Assessment ordinances, §14-91-503.
- Petition, §14-91-501.
  - Hearings on petition, §14-91-502.
- Reassessments, §14-91-503.
- Recordation.
  - Effect of failure to record, §14-91-903.
- Sewer connections to lands outside district, §14-91-901.
- State health officer to approve plans, §14-91-102.
- Waterworks, gas or electric lights.
  - City or town council may operate, §14-91-402.
- Continuance of district for purpose of making improvements and repairs. See within this subheading, "Construction, operation, repair and sale of improvements."
- Contracts.
  - Board of improvements.
    - Conflicts of interest, §14-88-309.
    - Power to contract, §14-88-210.
- Conveyances.
  - Winding up affairs, §14-88-604.
- County aid.
  - Applicability.
    - Exceptions, §14-89-701.
  - Evidences of indebtedness.
    - Validity, §14-89-702.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

County aid —Cont'd

Exceptions to provisions.

County to which provisions do not apply, §14-89-701.

Validity of indebtedness, §14-89-702.

Definitions.

Advancement of funds by municipalities, §14-89-801.

Assessments, §14-90-101.

Construction, operation, repair and sale of improvements.

Levee or flood control districts, §14-91-302.

Dissolution of districts.

Surplus funds reverts to municipality upon dissolution and payment of indebtedness, §14-89-1305.

Electric light plants.

Construction, operation, repair and sale of improvements.

Waterworks, electric plants and sewers. See within this subheading, "Construction, operation, repair and sale of improvements."

Operation of waterworks, gas or electric light works by city or town council, §14-91-402.

Electric street light districts.

Borrowing money.

Authority of certain districts to borrow money, §14-89-203.

Continuance of district, §14-88-212.

Installation in certain cities.

Authority to form improvement districts for installation, §14-88-212.

Powers of district, §14-88-212.

Examinations.

Annual financial settlements, §14-89-1103.

Financial settlements.

Annual financial settlements. See within this subheading, "Annual financial settlements."

Flood control districts.

Construction, operation, repair and sale of improvements.

Levee or flood control districts. See within this subheading, "Construction, operation, repair and sale of improvements."

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Formation of districts.

Beyond boundaries of cities.

Formation authorized, §14-88-201.

Compensation for preliminary work, §14-88-209.

Costs.

Limitation, §14-88-203.

Formation outside cities authorized, §14-88-201.

Form of notice, §14-88-203.

Hearing, §14-88-207.

Limitation of cost, §14-88-203.

Notice of hearing, §14-88-203.

Form of notice, §14-88-203.

Ordinance, §14-88-207.

Form of ordinance, §14-88-301.

Petition for establishment, §14-88-203.

Apportionment of assessed value

where district line crosses parcel of land for determination of sufficiency of signers of petition, §14-88-205.

Who may sign, §14-88-204.

Preliminary work of organization.

Compensation for preliminary work, §14-88-209.

Rejection when improvement does not conform to plan, §14-88-208.

Special meeting to establish, §14-88-203.

Funds.

Winding up affairs.

Turning over funds to city, §14-88-603.

Gas works.

Operation of waterworks, gas or electric light works by city or town council, §14-91-402.

Leases.

Terms, §14-88-501.

Use of proceeds, §14-88-501.

Levee or flood control districts.

Construction, operation, repair and sale of improvements. See within this subheading, "Construction, operation, repair and sale of improvements."

Liens.

Assessments, §14-90-805.

In rem proceedings to foreclose liens, §§14-90-1401 to 14-90-1411. See within this subheading, "Assessments."

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Liens —Cont'd

Construction, operation, repair and sale of improvements.

Continuance of district for purpose of making improvements and repairs.

Levy of assessments,  
§14-91-602.

Limit on tax levy, §14-90-801.

Mandamus.

Enforcement of act by mandamus,  
§14-88-101.

Mortgages and deeds of trust.

Water and light plants.

Authority of district,  
§14-89-202.

Notice.

Construction, operation, repair and sale of improvements.

Continuance of district for purpose of making improvements and repairs.

Readjustment of assessments,  
§14-91-604.Operation of improvements,  
§§14-91-101 to 14-91-1106. See within this subheading, "Construction, operation, repair and sale of improvements."

Ordinances.

Annexation of territory to district,  
§14-88-503.

Assessments.

Certified copy of ordinance,  
§14-90-902.

Construction, operation, repair and sale of improvements.

Continuance of district for purpose of making improvements and repairs, §14-91-601.

Installment payments,  
§§14-90-801 to  
14-90-803.Formation of districts,  
§14-88-207.

Form of ordinance, §14-88-301.

Penalties.

Bond issues.

Improper use of proceeds,  
§14-89-201.Failure of former collecting officers to turn over books to improvement collector,  
§14-88-405.**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Penalties —Cont'd

Misuse of funds, §14-88-401.

Petition for establishment,  
§14-88-203.Apportionment of assessed value where district line crosses parcel of land for determination of sufficiency of signers,  
§14-88-205.

Who may sign, §14-88-204.

Powers.

Additional powers of cities and towns involved, §14-88-201.

Corporate powers, §14-88-210.

Improvements outside limits,  
§14-88-502.Purposes for formation,  
§14-88-202.

Real property.

Winding up affairs.

Turning over real estate to city,  
§14-88-603.

Recommendations of city planning commission.

Rejection when improvement does not conform to plan,  
§14-88-208.

Records.

Winding up affairs.

Turning over records to city,  
§14-88-603.

Redemption of lands held by dissolved district.

Use of funds, §14-88-605.

Refunding bonds. See within this subheading, "Bond issues."

Repair improvements, §§14-91-101 to 14-91-1106. See within this subheading, "Construction, operation, repair and sale of improvements."

Replacement of void district with new district, §14-88-206.

Reports.

Annual financial reports.

Failure to file.

Removal of board members,  
§14-89-1403.Penalties for not filing,  
§14-89-1401.

Required, §14-89-1402.

Final reports, §14-88-603.

Winding up affairs.

Final reports, §14-88-603.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Road improvement districts.

Existence of road improvement district does not affect validity of municipal improvement district, §14-88-211.

Taxation.

Road tax.

Applicability of provisions, §14-89-502.

Distribution in certain cities, §14-89-502.

Payment to certain improvement districts, §14-89-501.

Rural improvement districts.

Construction, operation, repair and sale of improvements.

Levee or flood control districts.

Applicability of act, §14-91-301.

Sale of improvements, §§14-91-101 to 14-91-1106. See within this subheading, "Construction, operation, repair and sale of improvements."

Payment to certain improvement districts, §14-89-501.

Settlements.

Annual financial settlements. See within this subheading, "Annual financial settlements."

Sewers.

Construction, operation, repair and sale of improvements.

Waterworks, electric plants and sewers. See within this subheading, "Construction, operation, repair and sale of improvements."

Surplus funds.

Transfer to municipality, §14-89-1303.

State aid.

Surplus funds in districts receiving state aid.

Street fund.

Transfer to street fund, §14-89-1301.

Status.

Bodies corporate, §14-88-210.

Street improvement districts.

Excess collections refunded pro rata to property owners by street improvement districts, §14-89-1202.

Definition of property owner, §14-89-1201.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Street improvement districts —Cont'd

Excess collections refunded pro rata to property owners by street improvement districts —Cont'd  
Delinquent real estate not counted in pro rata distribution, §14-89-1203.

Existence of road improvement district does not affect validity of municipal improvement district, §14-88-211.

Taxation.

Road tax.

Applicability of provisions, §14-89-502.

Distribution in certain cities, §14-89-502.

Payment to certain improvement districts, §14-89-501.

Surplus funds.

Airport improvement districts.

Disposition of surplus funds, §14-89-1304.

Dissolution of district.

Reversion of surplus funds to municipality after dissolution and payment of indebtedness, §14-89-1305.

Districts receiving state aid.

Street fund.

Transfer of surplus funds in districts receiving state aid to street fund, §14-89-1301.

Sewer improvement districts.

Transfer of surplus funds to municipalities, §14-89-1303.

Taxation.

Actions for collection, §14-88-504.

Assessments.

Limit on tax levy, §14-90-801.

Limit on levy, §14-90-801.

Street improvement districts.

Road tax, §§14-89-501, 14-89-502.

Water and electric light improvement districts.

School tax. See within this subheading, "Water and electric light improvement districts."

Terms, §14-88-405.

Time of payment, §14-90-801.

Treasurer.

Appointment, §§14-88-403, 14-88-404.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Treasurer —Cont'd

Assessments, §14-90-916.

Bonds, surety, §§14-88-403,  
14-88-404.Exceptions in certain cities,  
§14-88-403.Improper use of funds by treasurer  
or subordinate official,  
§14-88-402.

Oath of office, §14-88-404.

Payment of money.

Commission of treasurer,  
§14-89-1001.Same person may be treasurer in  
different districts.Money to be kept separately,  
§14-88-403.Urban service districts, §§14-95-101 to  
14-95-610.

See URBAN SERVICE DISTRICTS.

Validity of districts or assessments.

Actions involving, §14-88-504.

Road improvement districts.

Effect on validity, §14-88-211.

Void districts.

Creation of new district to replace,  
§14-88-206.

Warrants for payment of money.

Form, §14-89-1002.

Numbering, §14-89-1002.

Payment upon warrant,  
§14-89-1002.

Treasurer.

Commission, §14-89-1001.

Water and electric light improvement  
districts.

Municipal district tax.

Certain districts subject to tax,  
§14-89-601.

School district tax.

Applicability of act, §14-89-601.

Assessments.

Method of assessing property of  
district for school taxes,  
§14-89-603.Property subject to tax,  
§14-89-602.Type of property subject to tax,  
§14-89-602.

Water and electric light plants.

Mortgage of water and light plants.

Authority of district, §14-89-202.

Operation in certain cities pending  
retirement of bonds, §14-91-401.**IMPROVEMENT DISTRICTS**

—Cont'd

**Municipal districts —Cont'd**

Water district accounting law.

Applicability to municipal  
improvement districts,  
§14-89-101.Noncompliance by municipal  
improvement districts,  
§14-89-101.

Waterworks.

Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers. See within this  
subheading, "Construction,  
operation, repair and sale of  
improvements."Operation of waterworks, gas or  
electric lights by city or town  
council, §14-91-402.

Winding up affairs.

Applicability of provisions,  
§14-88-601.

Authorized, §14-88-602.

Conveyances of lands held by  
district, §14-88-604.Discharge of commissioners,  
§14-88-603.Redemption of lands held by  
dissolved district.

Use of funds, §14-88-605.

Reports.

Final reports, §14-88-603.

Scope of provisions, §14-88-601.

Turning over real estate, funds and  
records to city, §14-88-603.

When authorized, §14-88-602.

**Municipal property owners'  
improvement districts.**General provisions, §§14-94-101 to  
14-94-128.See MUNICIPAL PROPERTY  
OWNERS' IMPROVEMENT  
DISTRICTS.**Notice.**

Assessments.

Delinquencies.

Sale of land, §§14-86-1401 to  
14-86-1405. See within this  
heading, "Assessments."Construction, operation, repair and  
sale of improvements.Continuance of district for purpose  
of making improvements and  
repairs.Readjustment of assessment,  
§14-91-604.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Notice —Cont'd**

Formation of districts.

Applicability of provisions,  
§14-86-302.

Definition of "address," §14-86-301.

Requirements, §14-86-303.

**Municipal districts.**Annexation of territory to district,  
§14-88-503.

Assessments.

Correction of erroneous  
descriptions or omitted lands,  
§14-90-601.

Delinquencies.

Actions to enforce payment,  
§14-90-1003.

Unredeemed land, §14-90-911.

Filing of assessments, §14-90-402.

Form of notice for collection of  
assessment, §14-90-903.In rem proceedings to foreclose  
lien, §14-90-1408.Revision of assessments,  
§14-90-602.Construction, operation, repair and  
sale of improvements.Utility companies to be notified  
before paving of street,  
§14-91-103.Waterworks, electric plants and  
sewers.Sale of waterworks when  
waterworks and sewer  
system constructed by same  
district, §§14-91-1001,  
14-91-1002.**Petitions.**Provision required on every petition,  
§14-86-201.Unlawful to circulate without,  
§14-86-201.Provision required on every petition  
for establishment, §14-86-201.Unlawful to circulate without,  
§14-86-201.Suburban improvement districts. See  
within this heading, "Suburban  
improvement districts."Unlawful to circulate petition without  
required notice provision,  
§14-86-201.**Oaths.**

Municipal districts.

Assessments.

Board of assessments.

Oath of office, §14-90-202.

Assessors, §14-88-407.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Oaths —Cont'd**

Municipal districts —Cont'd

Board of improvements.

Oath of office, §14-88-302.

Treasurer, §14-88-404.

**Ordinances.**Municipal districts. See within this  
heading, "Municipal districts."**Parties.**

Municipal districts.

Assessments.

Delinquencies.

Actions to enforce payment,  
§§14-90-1004, 14-90-1005.**Partition of assessments among  
several owners of tract,**  
§14-86-601.**Penalties.**

Audits.

Nonmunicipal districts.

Failure to appear or deliver  
documents, §14-86-2003.

Counties with over 75,000 population.

Delinquent assessments.

Addition of penalty and costs to  
tax, §14-86-1206.Failure of collector to certify  
delinquent list, §14-86-1203.

Depositories.

Bonds, surety.

Failure to require bond,  
§14-86-1801.Destruction of section corners,  
§14-86-502.

Municipal districts.

Annual financial settlements.

Failure to file, §14-89-1101.

Assessments.

Collection of assessments,  
§14-90-901.

Delinquencies, §14-90-1403.

Bond issues.

Improper use of proceeds,  
§14-89-201.

City improvement collectors.

Failure of former collecting officers  
to turn over books to  
improvement collector,  
§14-88-405.

Misuse of funds, §14-88-401.

Reports.

Annual financial reports,  
§14-89-1401.

Suburban improvement districts.

Bond issues.

Improper use of funds, §14-92-203.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Penalties —Cont'd**

Taxation.

Delinquencies.

Apportioned assessment.

Relief from penalties,  
§14-86-1003.Remission of delinquent penalties,  
§14-86-1002.**Petitions.**

Audits.

Nonmunicipal improvement  
districts, §§14-86-2001,  
14-86-2002.

Municipal districts.

Annexation of territory to districts,  
§14-88-503.

Notice.

Provisions about notice required on  
petition, §14-86-201.Unlawful to circulate petition  
without required notice,  
§14-86-201.Suburban improvement districts. See  
within this heading, "Suburban  
improvement districts."**Planning.**Suburban improvement districts. See  
within this heading, "Suburban  
improvement districts."**Preliminary expenses.**

Bond issues.

Use to pay, §14-86-702.

Levy of tax, §14-86-701.

**Property owners' improvement districts.**General provisions, §§14-93-101 to  
14-93-133.See **PROPERTY OWNERS'  
IMPROVEMENT DISTRICTS.**Municipal property owners'  
improvement district law,  
§§14-94-101 to 14-94-128.See **MUNICIPAL PROPERTY  
OWNERS' IMPROVEMENT  
DISTRICTS.****Publication.**

Municipal districts.

Assessments.

Delinquencies.

Action to enforce payment,  
§14-90-1003.**Public utilities.**Municipal districts generally. See  
within this heading, "Municipal  
districts."**IMPROVEMENT DISTRICTS**

—Cont'd

**Railroads.**

Municipal districts.

Assessments.

Property subject to assessment,  
§14-90-302.**Rates and charges.**

Municipal districts.

Operation of water and electric light  
plants in certain cities pending  
retirement of bonds, §14-91-401.

Suburban improvement districts.

Joint operation of contiguous  
districts.Schedule of rates fixed by  
commissioners, §14-92-307.**Ratification of acts of improvement districts, §14-86-101.****Real property.**

Mobile or manufactured home

permanently affixed to foundation.

Deemed real property, §14-86-102.

Taxation.

Delinquencies. See within this  
heading, "Taxation."**Receivers.**

Tax sales.

Redemption of land from state,  
§14-86-1602.**Recordation.**

Assessments.

Delinquencies.

Counties of more than 150,000  
population.Fee for recording delinquent list  
abolished, §14-86-1304.

Consolidation.

Liens recorded where land located,  
§14-87-104.Requirement of recordation in each  
county where district located in  
more than one county,  
§14-87-104.

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien.Delinquent list and redemptions  
recorded, §14-90-1404.Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers.Connection of sewers to lands  
outside districts,  
§14-91-903.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Records.**

Winding up affairs.

Turning over records to city,  
§14-88-603.**Refunding bonds.**Consolidation of districts. See within  
this heading, "Consolidation."**Reorganization of districts.**General provisions. See within this  
heading, "Consolidation."**Reports.**

Audits.

Nonmunicipal districts, §14-86-2004.

Municipal districts.

Annual financial reports.

Failure to file.

Removal of board members,  
§14-89-1403.Penalties for violation,  
§14-89-1401.

Required, §14-89-1402.

Operation of water and electric light  
plants in certain cities pending  
retirement of bonds, §14-91-401.

Winding up affairs.

Final report, §14-88-603.

**Rights of way.**

Municipal districts.

Construction, operation, repair and  
sale of improvements.Levee or flood control districts,  
§14-91-308.**Road improvement districts.**Suburban improvement districts. See  
within this heading, "Suburban  
improvement districts."**Rural improvement districts.**

Municipal districts.

Construction, operation, repair and  
sale of improvements.

Levee or flood control districts.

Applicability of act, §14-91-301.

**School districts.**

Municipal districts.

Assessment.

School district property subject to  
assessment, §14-90-303.**Section corners.**Destruction of section corners,  
§§14-86-501 to 14-86-504. See  
within this heading, "Destruction  
of section corners."**IMPROVEMENT DISTRICTS**

—Cont'd

Sewer improvement districts.

Municipal districts.

Construction, operation, repair and  
sale of improvements. See  
within this heading, "Municipal  
districts."

Surplus funds.

Transfer to municipality,  
§14-89-1303.**State departments and agencies.**

Assessments.

Payment of assessment,  
§14-86-603.

Exemptions, §14-86-604.

Retroactivity, §14-86-605.

Sale or transfer of land,  
§14-86-606.

Excluded from newly formed districts.

Option of state agency or  
commission, §14-86-607.**Subrogation.**

Consolidation.

Overdue taxes of subsidiary district,  
§14-87-110.**Suburban improvement districts.**

Actions.

Power to sue and be sued,  
§14-92-221.Validity of districts or assessments,  
§14-92-224.

Appeals.

Actions involving validity of districts  
or assessments or foreclosure of  
liens, §14-92-224.

Assessments.

Time of appeal from levy,  
§14-92-228.

Formation of districts, §14-92-206.

Two or more year delinquent  
assessments.

Reassessments, §14-92-101.

Applicability of provisions, §14-92-202.

Assessments, §14-92-225.

Actions involving validity.

Advancement, §14-92-224.

Additional levies, §14-92-239.

Adjustment, §14-92-226.

Appeal from levy.

Time, §14-92-228.

Assessor.

Annual reassessment of benefits,  
§14-92-227.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Assessments —Cont'd

Assessor —Cont'd

Duties, §14-92-230.

Bond issues.

Reassessment of benefits,  
§14-92-235.

Change of plans.

Material changes.

Reassessments, §14-92-218.

Clerk.

Commission of clerk, §14-92-230.

Deputies may be employed,  
§14-92-230.

Duties, §14-92-230.

Collection of taxes, §14-92-230.

Applicability of act, §14-92-601.

Delinquent taxes, §14-92-603.

Election to collect taxes,  
§14-92-602.

Collector.

Commissioner, §14-92-230.

Deputies may be employed,  
§14-92-230.

Delinquencies.

Collection, §14-92-603.

Enforcement of collection,  
§14-92-232.

Notice, §14-92-233.

Two or more year delinquent  
assessments.Reassessment generally,  
§14-92-101.Extension of taxes on books,  
§14-92-230.

Filing with county clerk, §14-92-226.

Hearing of complaints, §14-92-226.

Notice, §14-92-226.

Insufficient tax.

Additional levy, §14-92-231.

Limitation on additional levy,  
§14-92-231.

Interest on assessments, §14-92-229.

Levy of tax in proportion to  
assessments, §14-92-228.

Liens.

Foreclosure.

Actions advanced, §14-92-224.

On real property, §14-92-228.

Notice.

Delinquency, §14-92-233.

Reassessments.

Benefits.

Annual reassessment,  
§14-92-227.**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Assessments —Cont'd

Reassessments —Cont'd

Change of plans.

Material changes, §14-92-218.

Two or more year delinquent  
assessments.

Generally, §14-92-101.

Time for payment of taxes,  
§14-92-232.

Attorneys at law.

Legal services in organizing district,  
§14-92-214.Board of commissioners. See within  
this subheading, "Commissioners."

Bond issues.

Default in payment, §14-92-235.

Enforcement of levy and collection of  
tax by mandamus, §14-92-235.

Improper use of funds.

Penalties, §14-92-203.

Interest, §14-92-234.

Joint operation of contiguous  
districts.Resolution for retiring outstanding  
bond issues.Generally, §§14-92-304,  
14-92-305.Lien on property of district,  
§14-92-235.

Foreclosure.

Advancement of action,  
§14-92-224.Mandamus to enforce levy and  
collection of tax, §14-92-235.

Maturity, §14-92-234.

Pledge prohibited, §14-92-203.

Reassessment of benefits,  
§14-92-235.

Receiver, §14-92-235.

Security, §14-92-234.

Bonds, surety.

Contractors, §14-92-211.

Collection of taxes.

Enforcement generally, §14-86-802.

Commissioners, §14-92-207.

Administrative powers, §14-92-210.

Conflicts of interest, §14-92-208.

Conversion of district into new fire  
protection district, §14-92-237.

Dissolution of district, §14-92-237.

Districts of less than six thousand  
lots.Alteration of number of and  
method of selecting  
commissioners, §14-92-240.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Commissioners —Cont'd

Election.

Districts of less than six thousand lots.

Alteration of number of and method of selecting commissioners, §14-92-240.

Joint operation of contiguous districts.

Joint petition for appointment, §14-92-302.

Organization and powers, §14-92-302.

Liability, §14-92-207.

Oath of office, §14-92-207.

Officers, §14-92-207.

Planning, §14-92-216.

Change of plans, §§14-92-217, 14-92-218.

Powers of board.

Administrative powers, §14-92-210.

Sale of unnecessary materials, §14-92-215.

Removal, §14-92-209.

Petition, §14-92-209.

Bringing district under certain provisions, §14-92-202.

Vacancies, §14-92-209.

Petition to bring district under certain provisions, §14-92-202.

Conflicts of interest.

Commissioners, §14-92-208.

Consolidation.

Joint operation of contiguous districts. See within this subheading, "Joint operation of contiguous districts."

Construction and interpretation.

Applicability of provisions, §14-92-202.

Contiguous districts.

Joint operation of contiguous districts. See within this subheading, "Joint operation of contiguous districts."

Continued existence of district, §14-92-239.

Contractors.

Bonds, surety, §14-92-211.

Payments.

Percentage payments as work progresses, §14-92-213.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Contractors —Cont'd

Percentage payments as work progresses, §14-92-213.

Progress of work.

Payment as work progresses. Percentage payments, §14-92-213.

Conversion into new fire protection districts, §14-92-237.

Debts.

Conversion of district into new fire protection district.

Payment, §14-92-237.

Dissolution of district.

Payment, §14-92-237.

Definitions, §14-92-201.

Dissolution, §14-92-237.

Eminent domain.

Authority of district, §14-92-222.

Joint operation of contiguous districts, §14-92-310.

Purposes, §14-92-222.

Failure to make improvement.

Levy of tax, §14-92-238.

Preliminary expense, §14-92-238.

Formation of districts.

Appeals, §14-92-206.

Legal services in organizing, §14-92-214.

Petition for formation. See within this subheading, "Petition for formation."

Purposes, §14-92-219.

Validity.

Actions involving, §14-92-224.

Gifts.

Acceptance, §14-92-220.

Hearings.

Assessments, §14-92-226.

Change of plans.

Material changes, §14-92-218.

Commissioners.

Removal of commissioners, §14-92-209.

Joint operation of contiguous districts.

Resolution for retiring outstanding bond issues, §14-92-305.

Petition for formation.

Hearing on petition, §14-92-206.

Hearing prior to filing, §14-92-204.

Sale of property, §14-92-401.

Joint operation of contiguous districts.

Authorized, §14-92-301.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Joint operation of contiguous districts

—Cont'd

Bond issues, §14-92-306.

Authority as to, §14-92-303.

Resolution for retiring outstanding  
bond issues, §14-92-304.

Hearing, §14-92-305.

Notice, §14-92-305.

Protests, §14-92-305.

Publication, §14-92-305.

Borrowing of money, §14-92-306.

Commissioners.

Joint petition for appointment,  
§14-92-302.Organization and powers,  
§14-92-302.

Rates.

Schedule set by commissioners,  
§14-92-307.Consolidated systems may extend  
facilities, §14-92-309.

Contract for, §14-92-301.

Eminent domain, §14-92-310.

Extension of facilities.

Consolidated systems may extend  
facilities, §14-92-309.

Rates.

Schedule of rates for service fixed  
by commissioners, §14-92-307.

Real property.

Sale of property.

Generally, §§14-92-223,  
14-92-401 to 14-92-403. See  
within this subheading,  
"Sale of property."

Revenues.

Use of net revenues, §14-92-308.

Sale of property.

Cumulative nature of provisions,  
§14-92-403.

Status of consolidated systems.

Body politic, §14-92-303.

Use of net revenues, §14-92-308.

Liens.

Bond issues.

Lien on property of district,  
§14-92-235.

Foreclosure of lien, §14-92-235.

Municipalities of 25,000.

Water or sewer services.

Authority of district to turn over  
water or sewer system to  
municipality, §14-92-502.

Authority to operate, §14-92-501.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Notes.

Issuance, §14-92-234.

Notice.

Assessments.

Delinquency, §14-92-233.

Filing with county clerk,  
§14-92-226.

Commissioners.

Removal of commissioners,  
§14-92-209.Joint operation of contiguous  
districts.Resolution for retiring bond  
issues, §14-92-305.

Petition for formation.

Hearing on petition, §14-92-206.

Hearing prior to filing, §14-92-204.

Planning.

Change of plans, §§14-92-217,  
14-92-218.

Sale of property, §14-92-401.

Numbering of districts, §14-92-205.

Petition for formation, §14-92-205.

Hearing on petition, §14-92-206.

Hearing prior to filing, §14-92-204.

Planning, §14-92-216.

Change of plans, §14-92-217.

Material changes.

Appeals, §14-92-218.

Assessments, §14-92-218.

Notice and hearing, §14-92-218.

Reassessments, §14-92-218.

Powers, §14-92-220.

Corporate powers, §14-92-221.

Eminent domain, §14-92-222.

Purpose, §14-92-222.

Publication.

Joint operation of contiguous  
districts.Resolution for retiring outstanding  
bond issues, §14-92-305.Purposes for which district organized,  
§14-92-219.

Road or street improvement districts.

County funds.

Contributions from county funds,  
§14-92-236.

Federal funds.

Receipt of federal funds,  
§14-92-236.

Road, automobile or gasoline tax.

Share of tax to district,  
§14-92-236.

**IMPROVEMENT DISTRICTS**

—Cont'd

**Suburban improvement districts**

—Cont'd

Sale of property.

Applicable provisions for sale of property, §14-92-402.

Authorized, §14-92-223.

Hearings, §14-92-401.

Majority.

Two-thirds majority required, §14-92-401.

Notice, §14-92-401.

Petition of landowners, §14-92-401.

Price, §14-92-401.

Procedure, §14-92-402.

**Taxation.**

Assessments. See within this subheading, "Assessments."

Two or more year delinquent assessments.

Interest on assessments, §14-92-101.

Reassessment.

Appeals, §14-92-101.

Cancellation of prior delinquent assessments, §14-92-101.

Hearing of complaints, §14-92-101.

Interest on assessments, §14-92-101.

Notice, §14-92-101.

Prior delinquent assessments cancelled, §14-92-101.

Unnecessary materials.

Sale, §14-92-215.

Warrants for payment of money, §14-92-212.

Water or sewer services.

Municipality of 25,000, §§14-92-501, 14-92-502.

**Surplus funds.**

Action to contest right to transfer, §14-86-1903.

Bridge districts.

Disposition, §14-86-1901.

Counties.

Distribution among counties, §14-86-1902.

Disposition generally, §14-86-1901.

Distribution among counties, §14-86-1902.

Drainage districts.

Disposition, §14-86-1901.

Levee districts.

Disposition, §14-86-1901.

Road improvement districts.

Disposition, §14-86-1901.

**Taxation.**

Assessments generally. See within this heading, "Assessments."

**IMPROVEMENT DISTRICTS**

—Cont'd

**Taxation —Cont'd**

Bond issues.

Payment of improvement taxes with district bonds, §14-86-803.

Reassessment not prevented, §14-86-803.

Collection of taxes.

Levee, drainage and road districts, §14-86-801.

Municipal bridge, suburban and road maintenance districts, §14-86-802.

County clerks.

Extending tax annually, §§14-86-901 to 14-86-905. See within this heading, "Extending tax annually."

Delinquencies.

Actions.

Lists of delinquent realty.

Suit for collection of taxes, §14-86-1106.

Collection.

County tax collectors.

Authority and responsibility, §14-86-1001.

County tax collector.

Authority and responsibility, §14-86-1001.

Definitions.

Real property, §14-86-1101.

Lists of delinquent realty, §14-86-1103.

Applicability of provisions, §14-86-1102.

Recordation, §14-86-1104.

Redemption of land on delinquent list, §14-86-1105.

Suit for collection of taxes, §14-86-1106.

Penalties.

Apportioned assessments.

Relief from penalties, §14-86-1003.

Remission of delinquent penalties, §14-86-1002.

Real property.

Defined, §14-86-1101.

Lists of delinquent realty, §14-86-1103.

Applicability of provisions, §14-86-1102.

Recordation, §14-86-1104.

Redemption of land on delinquent list, §14-86-1105.



**IMPROVEMENT DISTRICTS**

—Cont'd

**Taxation** —Cont'd

Delinquencies —Cont'd

Real property —Cont'd

Lists of delinquent realty —Cont'd

Suit for collection of taxes,  
§14-86-1106.Extending tax annually. See within  
this heading, "Extending tax  
annually."

Levee improvement districts.

Collection of taxes, §14-86-801.

Liens.

Enforcement of district tax lien  
when land forfeited to state for  
general taxes, §14-86-1601.Municipal districts. See within this  
heading, "Municipal districts."

Sale for taxes.

Foreclosure.

District may sell under foreclosure  
lands sold to state.Possession by purchaser,  
§14-86-1603.Receiver may redeem from state,  
§14-86-1602.

Redemption of land from state.

Purchaser at district tax sale may  
redeem, §14-86-1602.

Suburban improvement districts.

Assessments generally. See within  
this heading, "Suburban  
improvement districts."**Urban service districts**, §§14-95-101  
to 14-95-610.

See URBAN SERVICE DISTRICTS.

**Waiver.**

Municipal districts.

Assessments.

Redemption.

Waiver of right of redemption,  
§14-90-302.**Warrants for payment of money.**Municipal districts, §§14-89-1001,  
14-89-1002.

Suburban improvement districts.

Payment of money on order of  
commissioner, §14-92-212.**Water supply and waterworks.**

Municipal districts.

Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers. See within this  
heading, "Municipal districts."**IMPROVEMENT DISTRICTS**

—Cont'd

**Water supply and waterworks**

—Cont'd

Municipal districts —Cont'd

Mortgage of water and light plants.  
Authority of district, §14-89-202.Operation of waterworks, gas or  
electric lights by city or town  
council, §14-91-402.Water and electric light  
improvement districts.School district tax, §§14-89-601 to  
14-89-603. See within this  
heading, "Municipal districts."

Suburban improvement districts.

Municipalities of 25,000.

Water and sewer services,  
§§14-92-501, 14-92-502.

Water and electric light plants.

Municipal districts.

Operation in certain cities pending  
retirement of bonds,  
§14-91-401.**IMPROVEMENTS.****Districts.**

See IMPROVEMENT DISTRICTS.

**Municipal corporations.**

Assessments, §14-54-601.

Liens, §14-54-603.

Collectible as delinquent taxes,  
§14-54-604.Method of assessing land,  
§14-54-603.

Payment, §14-54-603.

Generally, §14-54-601.

**INDUSTRY.****Municipal corporations.**

New industries.

Powers of cities and towns to aid in  
establishing, §14-54-107.**INITIATIVE AND REFERENDUM.****Urban service districts.**Dissolution or modification of district,  
§14-95-304.

Establishment of district.

Applicability of constitutional  
provisions to ordinances,  
§14-95-203.**INJUNCTIONS.****Improvement districts.**

Municipal districts.

Construction, operation, repair and  
sale of improvements,  
§14-91-105.

**IN REM PROCEEDINGS.****Improvement districts.**

Municipal districts.

Assessments.

Foreclosure of lien by in rem proceedings, §§14-90-1401 to 14-90-1411.

See IMPROVEMENT DISTRICTS.

**INSURANCE.****Motor carriers.**

Municipal corporations.

Liability insurance, §14-57-202.

**Municipal corporations.**

Bids.

Cities of the first class, §14-58-304.

Motor carriers.

Liability insurance, §14-57-202.

**INTEREST.****Counties.**

Bond issues.

Indebtedness for courthouses and jails, §14-72-302.

Refunding bonds, §14-72-201.

Certificates of indebtedness for interest due on refunded bonds, §14-72-203.

**Improvement districts.**

Suburban improvement districts.

Assessments, §14-92-229.

Bond issues, §14-92-234.

Two or more year delinquent assessments, §14-92-101.

**Municipal corporations.**

Bond issues.

Refund of amendment 13 municipal bond proceeds.

Disposition of principal and interest, §14-72-701.

**Municipal property owners' improvement districts.**

Assessments.

Interest on assessment, §14-94-119.

Bond issues.

Payment of bonds and interest, §14-94-125.

**Property owners' improvement districts.**

Assessments, §14-93-120.

**J****JAILS.****Bond issues.**

Counties.

Indebtedness for courthouses and jails, §§14-72-301 to 14-72-307.

See COUNTIES.

**JAILS —Cont'd****Counties.**

Revenue bonds.

Indebtedness for courthouses and jails, §§14-72-301 to 14-72-307.

See COUNTIES.

**Revenue bonds.**

County indebtedness for courthouses and jails, §§14-72-301 to 14-72-307.

See COUNTIES.

**JURISDICTION.****Improvement districts.**

Consolidation.

Chancery court jurisdiction over refunding bonds and reorganization of districts, §14-87-103.

Municipal districts.

Assessments.

In rem proceedings to foreclose lien, §14-90-1405.

**Municipal corporations.**

Circuit courts.

Planning.

Jurisdiction on appeal, §14-56-425.

Planning.

Territorial jurisdiction, §14-56-413.

Cities with population over 8,000 situated on navigable streams, §14-56-413.

**L****LEASES.****Municipal property owners' improvement districts.**

Power to sell or lease improvements, §14-94-110.

**LEVEE DISTRICTS.****Improvement districts.**

Levee improvement districts.

General provisions.

See IMPROVEMENT DISTRICTS.

Municipal districts.

Construction, etc., of improvements.

See IMPROVEMENT DISTRICTS.

**LEVEES.****Improvement districts.**

Levee improvement districts generally.

See IMPROVEMENT DISTRICTS.

Municipal districts.

Construction, operation, repair and sale of improvements.

See IMPROVEMENT DISTRICTS.

**LIABILITY.****Excavations.**

- Municipal corporations.
- Liability of adjoining landowner, §14-56-101.

**Municipal corporations.**

- Joint services agreements.
- Municipalities separated by state line.
- Municipality liable for damages to state, §14-54-208.

**Zoning.**

- Excavations.
- Liability of adjoining landowner, §14-56-101.

**Municipal property owners' improvement districts.**

- Board of commissioners.
- Members of board, §14-94-107.
- Removal of members.
- Liability for damages.
- Corrupt intent required, §14-94-108.

**LICENSES.****Billiard halls.**

- Municipal corporations.
- Power to license, §14-54-1401.

**Bowling alleys.**

- Municipal corporations.
- Power to license, §14-54-1401.

**Municipal corporations.**

- Billiard halls.
- Power to license, §14-54-1401.
- Bowling alleys.
- Power to license, §14-54-1401.
- Pool rooms.
- Power to license, §14-54-1401.
- Taxicabs.
- Minors in cities of the first class, §§14-57-403, 14-57-404.

**Pool rooms.**

- Municipal corporations.
- Power to license, §14-54-1401.

**LIENS.****Improvement districts.**

- Consolidation.
- Recordation where land located, §14-87-104.
- Land forfeited to state for general taxes.
- Enforcement of district tax lien, §14-86-1601.

**Municipal districts.**

- Assessments, §14-90-805.
- In rem proceedings to foreclose liens, §§14-90-1401 to 14-90-1411.
- See IMPROVEMENT DISTRICTS.

**LIENS —Cont'd****Improvement districts —Cont'd****Municipal districts —Cont'd**

- Construction, operation, repair and sale of improvements.
- Continuance of district for purpose of making improvements and repairs.
- Levy of assessments, §14-91-602.

- Suburban improvement districts, §14-92-235.

**See IMPROVEMENT DISTRICTS.****Municipal corporations.**

- Clearance of unsightly and unsanitary conditions of real property.
- Clearance by city.
- Enforcement of lien, §14-54-904.
- Unknown or nonresident owners, §14-54-902.
- Upon refusal of owners, §14-54-903.

- Establishment and improvement of public grounds, §14-54-603.

- Lien collectible as delinquent taxes, §14-54-604.

**Improvements.**

- Assessments, §14-54-603.
- Lien collectible as delinquent taxes, §14-54-604.

**Loans.**

- Borrowing money by cities of first class for operating expenses.
- Unpaid balances a lien, §14-58-402.

**Municipal property owners' improvement districts.****Foreclosure.**

- Action to foreclose.
- Priority of cases, §14-94-114.

**Property owners' improvement district.**

- Preliminary expenses, §14-93-128.
- Taxation, §14-93-119.

**LIMITATION OF ACTIONS.****Improvement districts.**

- Counties with over 75,000 population.

**Delinquent assessments.**

- Action for collection of tax, §14-86-1208.

**Municipal districts.****Assessments.**

- In rem proceedings to foreclose lien.
- Redemption, §14-90-1301.



**LIMITATION OF ACTIONS —Cont'd****Improvement districts —Cont'd**

Taxation.

Delinquencies.

Lists of delinquent realty.

Suit for collection of taxes,  
§14-86-1106.**Municipal corporations.**

Ordinances.

Suits for recovery of fines by cities  
and towns, §14-55-605.**LIVERY STABLES.****Municipal corporations.**

Power to regulate, §14-54-1404.

**LIVESTOCK.****Municipal corporations.**

Auctions.

Authority of municipal corporations  
to regulate or prohibit sale of  
horses, etc., in street auctions,  
§14-54-1104.

Driving stock into city.

Unlawful for city employee,  
§14-54-1101.Preventing livestock from running at  
large, §14-54-1101.

Impoundment, §14-54-1101.

Notice, §14-54-1101.

Return to owner on payment of  
expenses, §14-54-1101.**Notice.**

Municipal corporations.

Impoundment, §14-54-1101.

Running at large.

Impoundment of animals running at  
large.Municipal corporations,  
§14-54-1101.**Penalties.**

Municipal corporations.

Driving stock into city.

Unlawful for city employee,  
§14-54-1101.**LOCAL GOVERNMENT REVENUE  
BOND ELECTIONS.**

Citation of subchapter, §14-72-601.

**Contests.**

Venue, §14-72-607.

**Definitions, §14-72-603.****Elections held prior to effective  
date, §14-72-608.****Exemptions, §14-72-605.****Intent of legislature, §14-72-602.****Legislative intent, §14-72-602.****Liberal construction of act,  
§14-72-604.****LOCAL GOVERNMENT REVENUE  
BOND ELECTIONS —Cont'd****Procedures.**

Generally, §14-72-606.

**Refunding bonds, §14-72-609.****Supplemental nature of act,  
§14-72-602.****Title of subchapter, §14-72-601.****Venue for actions, §14-72-607.****LOCAL GOVERNMENTS.****Audits.**Management letter for audit of  
political subdivisions.

Contents, §14-75-103.

Copy furnished legislative joint  
auditing committee, §14-75-104.Definition of "political subdivision,"  
§14-75-101.

Required, §14-75-102.

**Bankruptcy and insolvency.**Taxing agencies and instrumentalities,  
§14-74-103.**Bond issues.**

Elections.

Local government revenue bond  
elections generally.See LOCAL GOVERNMENT  
REVENUE BOND  
ELECTIONS.Taxing agencies and instrumentalities.  
Refunding bonds.

Authority to refund, §14-74-104.

State departments may hold,  
§14-74-105.**Definitions.**Fiscal responsibility and management,  
§14-77-102.

Reserve funds, §14-73-101.

**Elections.**

Bond issues.

Local government revenue bond  
elections generally.See LOCAL GOVERNMENT  
REVENUE BOND  
ELECTIONS.**Fiscal responsibility and  
management.**

Citation of chapter, §14-77-101.

Compliance with laws, §14-77-103.

Definitions, §14-77-102.

Public officers and employees.

Violations of law.

Reports in personnel files,  
§14-77-103.

Short title of chapter, §14-77-101.

Violation of laws.

Actions placed in personnel file,  
§14-77-103.

**LOCAL GOVERNMENTS —Cont'd****Fiscal responsibility and management —Cont'd**

## Violation of laws —Cont'd

Civil penalties, §14-77-108.

Civil procedures apply, §14-77-110.

Civil suit.

Prosecuting attorney, §14-77-107.

Corrective or remedial actions.

Failure to make, §14-77-105.

Notice, §14-77-104.

Time given to take, §14-77-105.

Costs.

Recovery of costs, §14-77-109.

Existing remedies not impaired, §14-77-111.

Investigations, §14-77-103.

Prosecuting attorney, §14-77-106.

Notice, §14-77-104.

Penalties.

Civil penalty, §14-77-108.

Prosecuting attorney.

Civil suits, §14-77-107.

Investigation, §14-77-106.

Prosecution.

Civil procedures apply, §14-77-110.

Recovery of costs, §14-77-109.

Remedies.

Existing remedies not impaired, §14-77-111.

**Funds.**

Reserve funds. See within this heading, "Reserve funds."

**Reserve funds.**

Definitions, §14-73-101.

Establishment.

Authority to establish for improvements, §14-73-102.

Trust agreements, §14-73-103.

Improvements.

Authority to establish reserve for improvements, §14-73-102.

Payments.

Each payment of separate contract, §14-73-103.

Funds into reserve, §14-73-104.

Trusts and trustees.

Trustee's fee, §14-73-103.

Written trust agreement, §14-73-103.

Contents, §14-73-103.

**Taxing agencies and instrumentalities.**

Bankruptcy, §14-74-103.

Bond issues.

Refunding bonds.

Authority to refund, §14-74-104.

**LOCAL GOVERNMENTS —Cont'd**  
**Taxing agencies and instrumentalities —Cont'd**

## Bond issues —Cont'd

## Refunding bonds —Cont'd

State departments may hold, §14-74-105.

Construction and interpretation.

Cumulative nature of provisions, §14-74-101.

Cumulative nature of provisions, §14-74-101.

Enumeration, §14-74-102.

Reconstruction finance corporation.

Right to cooperate with and borrow from, §14-74-104.

State departments and agencies.

Readjustment or refunding of bonded indebtedness.

Participation, §14-74-105.

What constitutes, §14-74-102.

**M****MANAGER FORM OF GOVERNMENT.**

See MUNICIPAL CORPORATIONS.

**MANDAMUS.****Improvement districts.**

Municipal districts.

Enforcement of act by mandamus, §14-88-101.

Suburban improvement districts.

Bond issues.

Enforcement of levy and collection of tax by mandamus, §14-92-235.

**MANUFACTURED HOMES.****Improvement districts.**

Status as property, §14-86-102.

**MAPS AND PLATS.****Improvement districts.**

Municipal districts.

Assessments.

Validity of land descriptions based on plat in office of municipal clerk, §14-90-301.

**MEDICAL WASTE INCINERATORS.****Building and use permits, §14-56-603.****Definitions, §14-56-601.****Establishment.**

Local governmental authority, §14-56-602.

**General provisions, §§14-56-601 to 14-56-605.****Injunctions for violation, §14-56-605.**

**MEDICAL WASTE INCINERATORS**

—Cont'd

**Penalties for violations**, §14-56-605.**Unlawful construction**, §14-56-604.**Unlawful operation**, §14-56-604.**Violations of ordinance**, §14-56-605.**Zoning ordinances.**

Enforcement, §14-56-603.

**METERS.****Parking meters.**

Municipal corporations, §§14-57-501 to 14-57-610.

See MUNICIPAL CORPORATIONS.

**MILITARY AFFAIRS.****Air Force installations.**

Control of property use near base, §14-56-426.

**Municipal corporations.**

Land use control near air force installations, §14-56-426.

**MILITARY RESERVATIONS.****Air force installations.**

Control of property use near base, §14-56-426.

**MILK AND MILK PRODUCTS.****Forms.**

Municipal corporations.

Ordinances regulating production, processing and sale of milk, §14-54-1202.

**Municipal corporations.**

Regulation of production, processing and sale.

Authority to regulate, §14-54-1201.

Passage of ordinance, §14-54-1202.

Form of ordinance, §14-54-1202.

Ordinances.

Form of ordinance, §14-54-1202.

Power to regulate, §14-54-1201.

**Ordinances.**

Municipal corporations.

Forms.

Regulating production, processing and sale of milk, §14-54-1202.

**Sales.**

Municipal corporations.

Regulation of sale of milk, §§14-54-1201, 14-54-1202.

**MINORS.****Municipal corporations.**

Taxicabs.

Unlawful operation of taxicabs generally, §§14-57-401 to 14-57-404.

See MUNICIPAL CORPORATIONS.

**MINORS —Cont'd****Taxicabs.**

Municipal corporations.

Unlawful operation of taxicabs generally, §§14-57-401 to 14-57-404.

See MUNICIPAL CORPORATIONS.

**MISDEMEANORS.****Building regulations**, §14-56-421.**Buses.**

Driver age, §14-57-401.

**Cabs.**

Driver age, §14-57-401.

**Cities.**

Livestock running at large.

Driving or enticing stock into city, §14-54-1101.

Vehicle tax, §14-57-701.

**City improvement collector appointment**, §14-88-405.**Delinquent improvement taxes and assessments in counties exceeding 75,000.**

Failure of collector to make, certify and file delinquent lists, §14-86-1203.

**Engineers working for improvement districts.**

Failure to relocate corners destroyed in doing work for district, §14-86-502.

**Estrays.**

Driving or enticing stock into city, §14-54-1101.

**Improvement district engineers.**

Failure to relocate corners destroyed in doing work for district, §14-86-502.

**Improvement district establishment.**

Circulation of petition for establishment without notice provisions, §14-86-201.

**Improvement district officers or commissioners.**

Failure to require bond of depository for district, §14-86-1801.

**Improvement district taxes and assessments in counties exceeding 75,000.**

Delinquent taxes.

Failure of collector to make, certify and file delinquent lists, §14-86-1203.

**Livestock.**

Running at large.

Driving or enticing stock into city, §14-54-1101.



**MISDEMEANORS —Cont'd**

**Medical waste incinerators,**  
§14-56-605.

**Motor vehicle tax,** §14-57-701.

**Municipal improvement district board members.**

Failure to make financial settlement,  
§14-89-1101.

**Municipal improvement district financial reports.**

Failure to file, §14-89-1401.

**Property taxes.**

Improvement district taxes and  
assessments in counties exceeding  
75,000.

Delinquent taxes.

Failure of collector to make,  
certify and file delinquent  
lists, §14-86-1203.

**Running at large, livestock.**

Driving or enticing stock into city,  
§14-54-1101.

**Taxation.**

Motor vehicle tax, §14-57-701.

**Taxicabs.**

Driver age, §14-57-401.

**Towns.**

Vehicle tax, §14-57-701.

**Zoning,** §14-56-421.**MORTGAGES AND DEEDS OF TRUST.****Improvement districts.**

Municipal districts.  
Water and light plants.  
Authority to mortgage,  
§14-89-202.

**MOTION PICTURES.****Municipal corporations.**

Laws permitting shows on Sunday  
unaffected, §14-54-1402.

**MOTOR CARRIERS.****Bonds, surety.**

Municipal corporations, §14-57-202.

**Insurance.**

Municipal corporations.  
Liability insurance, §14-57-202.

**Municipal corporations.**

Bonds, surety.  
Cash bond as compliance,  
§14-57-202.  
Indemnity bonds, §14-57-202.  
Indemnity bonds, §14-57-202.  
Insurance.  
Liability insurance, §14-57-202.  
Liability insurance, §14-57-202.  
Regulation, §14-57-201.

**MOTOR CARRIERS —Cont'd****Municipal corporations —Cont'd**

Taxation, §14-57-201.

**MOTORCYCLES.****Municipal corporations.**

Tax on wheeled vehicles, §14-57-104.

**Taxation.**

Municipal corporations.  
Wheeled vehicles, §14-57-104.

**MOTOR VEHICLES.****Municipal corporations.**

General provisions, §§14-57-101 to  
14-57-712.

See MUNICIPAL CORPORATIONS.

**Parking meters.**

Municipal corporations, §§14-57-501 to  
14-57-610.

See MUNICIPAL CORPORATIONS.

**Taxicabs.**

Municipal corporations.  
General provisions, §§14-57-301 to  
14-57-308.

See MUNICIPAL  
CORPORATIONS.

**Tires.**

Width.  
Municipal corporations.  
Regulation of tire width,  
§14-57-103.

**MUNICIPAL CORPORATIONS.****Accounts and accounting.**

Accounting systems above minimum,  
§14-59-103.

**Affidavits.**

Submission, §14-59-115.  
Application of act, §14-59-102.  
Bank accounts, §14-59-104.  
Reconciliation, §14-59-108.

**Cash disbursement journals.**

First and second-class cities,  
§14-59-111.

Incorporated towns, §14-59-113.

**Cash receipts journals.**

First and second-class cities,  
§14-59-110.

Incorporated towns, §14-59-112.

**Checks.**

Prenumbered checks, §14-59-105.  
Citation of act, §14-59-101.  
Electronic funds transfers, §14-59-105.  
Financial statements.

Publication by posting, §14-59-116.

**Fixed asset records,** §14-59-107.**Funds.**

Petty cash funds, §14-59-106.  
Independent accountants.  
Review of accounting records,  
§14-58-101.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Accounts and accounting —Cont'd**

- Journals.
  - Cash disbursement journals.
  - Cities of first and second-class, §14-59-111.
  - Incorporated towns, §14-59-113.
- Cash receipts journals.
  - First and second-class cities, §14-59-110.
  - Incorporated towns, §14-59-112.
- Maintenance and destruction of accounting records, §14-59-114.
- Minimum.
  - Accounting systems above minimum, §14-59-103.
- Motor vehicles.
  - Privilege tax.
    - Separate bank account for collections, §14-57-712.
  - Petty cash funds, §14-59-106.
  - Prenumbered checks, §14-59-105.
  - Prenumbered receipts, §14-59-109.
- Publications.
  - Financial statements, §14-59-116.
  - Posting, §14-59-116.
- Receipts.
  - Prenumbered receipts, §14-59-109.
- Reconciliation of bank accounts, §14-59-108.
- Records.
  - Fixed asset records, §14-59-107.
  - Maintenance and destruction of accounting records, §14-59-114.
- Reports.
  - Submission, §14-59-115.
- Scope of act, §14-59-102.
- Submission of reports and affidavits, §14-59-115.
- Systems.
  - Accounting systems above minimum, §14-59-103.
- Title of act, §14-59-101.
- Towns.
  - Cash receipts journals, §14-59-112.

**Actions.**

- Ordinances.
  - Suits for recovery of fines by cities and towns, §14-55-605.
  - Additional remedies of cities of first class, §14-55-606.
  - Additional remedies of cities of second class, §14-55-607.
  - Limitation of actions, §14-55-605.

**Affidavits.**

- Accounts and accounting.
  - Submission of affidavit, §14-59-115.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Age.**

- Taxicabs.
- Drivers' licenses.
- Proof of age required, §14-57-404.

**Alleys.**

- Establishment and improvement of alleys, §14-54-601.
- Ordinances.
  - Persons in jail for violation of city or town ordinances.
  - Work on streets and improvements, §14-55-603.
  - Working out fines on streets and alleys, §14-55-604.

**Amendments.**

- Ordinances.
  - Authorization and filing, §14-55-704.

**Animals.**

- Auctions.
  - Authority to regulate or prohibit sale of horses, etc., §14-54-1104.

**Livestock.**

- Preventing livestock from running at large, §14-54-1101.
- Impoundment, §14-54-1101.
  - Notice, §14-54-1101.
  - Return to owner upon payment of expenses, §14-54-1101.
- Unlawful for city employee to drive stock into city, §14-54-1101.

**Misdemeanors.**

- Unlawful for city employee to drive stock into city, §14-54-1101.

**Notice.**

- Impoundment of stock, §14-54-1101.

**Taxation.**

- Dogs and domestic animals, §14-54-1103.

**Appeals.**

- Taxicabs.
  - Applications for permit.
  - Judicial review, §14-57-308.
  - Rates and charges, §14-57-303.

**Appropriations.**

- Approval of appropriations.
  - Required, §14-55-204.
- Planning, §14-56-410.
  - Metropolitan or regional planning commissions, §14-56-509.

**Arrest.**

- Shopping centers.
  - Control of areas adjacent to shopping centers.
  - Policing of area, §14-54-504.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Assessments.**

Improvements, §14-54-601.

Liens, §14-54-603.

Collectible as delinquent taxes,  
§14-54-604.

Methods of assessing, §14-54-603.

Payment, §14-54-603.

**Attorneys at law.**Clearance of unsightly and unsanitary  
conditions of real property.Notice upon unknown or  
nonresident owners.

Attorneys ad litem, §14-54-902.

**Auctions and auctioneers.**

Livestock.

Authority of municipal corporations  
to regulate or prohibit auction  
sale of horses, etc., §14-54-1104.**Audits.**

Annual audits.

Cities of the first class, §14-58-307.

Cities of the first class.

Annual audits, §14-58-307.

Review of accounting records when  
audit by independent accountant.

Purpose, §14-58-101.

**Banks.**

Accounts and accounting.

Bank accounts, §14-59-104.

Reconciliation, §14-59-108.

**Barber poles.**Prohibition against use of barber poles  
forbidden, §14-54-1406.**Beggars.**Powers of cities to punish,  
§14-54-1408.**Bids.**

Insurance.

Cities of the first class, §14-58-304.

Purchase by first class cities,  
§14-58-304.

Purchases and supplies, §14-58-303.

**Billiard halls.**

Licenses.

Power to license, §14-54-1401.

Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.

Taxation.

Power to tax, §14-54-1401.

**Biogenic gases.**

Processing crude biogenic gases.

Lease, sale or conveyance of real  
property for.

Authorized, §14-54-401.

Bidding, §14-54-402.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Biogenic gases —Cont'd**

Processing crude biogenic gases

—Cont'd

Lease, sale or conveyance of real  
property for —Cont'd

Bond issues.

Authorized, §14-54-404.

Notice.

Bidding, §14-54-402.

Ordinances.

Implementing legislation,  
§14-54-403.**Blue laws.**Authority to operate businesses on  
Sunday, §14-54-1402.Motion picture show laws  
unaffected, §14-54-1402.**Boards and commissions.**

Planning.

Commissions, §§14-56-401 to  
14-56-425. See within this  
heading, "Planning."**Body corporate and politic,**

§14-54-101.

**Bond issues.**Amendment 13 municipal bond  
proceeds.

Refund of, §§14-72-701 to 14-72-703.

Claims.

Filing, §14-72-702.

Filing of claims, §14-72-702.

Notice.

Publication, §14-72-703.

Principal and interest.

Disposition, §14-72-701.

Publication of notice, §14-72-703.

Biogenic gases.

Processing crude biogenic gases.

Lease, sale or conveyance of real  
property for.Authority to issue bonds,  
§14-54-404.

Claims.

Refund of amendment 13 municipal  
bond proceeds.

Filing of claims, §14-72-702.

Interest.

Refund of amendment 13 municipal  
bond proceeds.Disposition of principal and  
interest, §14-72-701.

Notice.

Refund of amendment 13 municipal  
bond proceeds.

Publication of notice, §14-72-703.



**MUNICIPAL CORPORATIONS**

—Cont'd

**Bond issues —Cont'd**

Parking meters.

Bond issues secured by parking meter funds, §§14-57-601 to 14-57-610. See within this heading, "Parking meters."

Principal and interest.

Refund of amendment 13 municipal bond proceeds.

Disposition, §14-72-701.

Publication.

Refund of amendment 13 municipal bond proceeds.

Notice, §14-72-703.

Refunding bonds.

Constitutional Amendment No. 13.

Refunding bonds issued under.

Form of bonds, §14-72-504.

Generally, §14-72-502.

Methods of issuance,  
§14-72-503.

Sale of bonds, §14-72-503.

Refund of amendment 13 municipal bond proceeds, §§14-72-701 to 14-72-703.

Claims.

Filing, §14-72-702.

Disposition of principal and interest,  
§14-72-701.

Filing of claims, §14-72-702.

Notice.

Publication of notice, §14-72-703.

Principal and interest.

Disposition, §14-72-701.

Publication of notice, §14-72-703.

Water pollution control grants.

Water and sewer revenue bonds for repayment of, §14-72-101.

**Bonds, surety.**

Cities of the first class.

Public officers and employees,  
§14-58-308.

Motor vehicles.

Motor carriers, §14-57-202.

Officers, §14-58-308.

Public officers and employees.

Cities of the first class, §14-58-308.

Taxicabs.

Permits to operate, §14-57-306.

**Bowling alleys.**

Licenses.

Power to license, §14-54-1401.

Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.

Taxation.

Power to tax, §14-54-1401.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Box-ball alleys.**

Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.

**Budgets.**

Adoption, §14-58-202.

Alteration or revision authorized,  
§14-58-203.

Exception, §14-58-203.

Annual adoption of budget,  
§14-58-202.

Annual financial reports.

Submitted by mayor, §14-58-302.

Applicability of provisions, §14-58-201.

Approval, §14-58-203.

Mayor-council form of government,  
§14-58-201.

Reports.

Annual financial reports submitted  
by mayor, §14-58-302.

**Buildings.**

Cities of the first class.

Additional powers, §14-56-202.

Construction, alteration and repair.

Cities of the first class.

Additional powers to regulate  
construction, §14-56-202.

Permits, §14-56-202.

Powers of municipal corporations,  
§14-56-201.

Powers to require use of fire proof or  
fire resistant materials,  
§14-56-201.

Rules and regulations authorized,  
§14-56-201.

Eminent domain.

Cities and towns on state line.

Passage of condemnation  
ordinance, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise,  
§14-54-106.

Permits.

Cities of the first class.

Construction permits, §14-56-202.

Razing, §14-56-203.

Removal, §14-56-203.

Zoning.

Conformity to zoning ordinances,  
§14-56-305.

Exceptions, §14-56-305.

**Burials.**

Burial outside city limits, §14-54-803.

Power to require burial outside city  
limits, §14-54-803.

Regulations, §14-54-802.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Burials** —Cont'd

Removal of bodies.

Burial outside city limits,  
§14-54-803.**Buses.**

Regulation, §14-57-101.

**Businesses.**

Zoning.

Conformity to zoning ordinances,  
§14-56-305.**Carriages.**Regulation of carriages for hire,  
§14-54-1403.**Checks.**

Accounts and accounting.

Prenumbered checks, §14-59-105.

**Circuit courts.**

Appeals.

Planning.

Jurisdiction on appeal, §14-56-425.

Planning.

Jurisdiction on appeal, §14-56-425.

**Cities of the first class.**

Audits.

Annual audits, §14-58-307.

Bonds, surety.

Public officers and employees,  
§14-58-308.

Buildings.

Additional powers, §14-56-202.

City manager enabling act of 1989,  
§§14-61-101 to 14-61-119. See  
within this heading, "Manager  
form of government."Financial aid to state colleges and  
universities, §14-58-504.

Insurance.

Bids, §14-58-304.

Manager form of government.

City manager enabling act of 1989,  
§§14-61-101 to 14-61-119. See  
within this heading, "Manager  
form of government."

Mayors.

City manager enabling act of 1989.

Generally. See within this  
heading, "Manager form of  
government."Manager form of government. See  
within this heading, "Manager  
form of government."

Motor vehicles.

General provisions. See within this  
heading, "Motor vehicles."

Municipal improvements generally.

See IMPROVEMENT DISTRICTS.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Cities of the first class** —Cont'd

Nurses' training schools.

Authority to establish, §14-54-801.

Officers.

Bonds, surety, §14-58-308.

Planning.

Powers as to, §14-56-402.

Powers.

Additional powers, §14-54-104.

Public officers and employees.

Bonds, surety, §14-58-308.

Taxicabs.

General provisions. See within this  
heading, "Taxicabs."**Cities of the second class.**Financial aid to state colleges and  
universities, §§14-58-504,  
14-58-505.Municipal improvement districts  
generally.

See IMPROVEMENT DISTRICTS.

Planning.

Powers as to, §14-56-402.

Powers.

Additional powers, §14-54-105.

**City manager enabling act of 1989.**

Manager form of government.

Cities of the first class, §§14-61-101  
to 14-61-119. See within this  
heading, "Manager form of  
government."**City managers.** See within this  
heading, "Manager form of  
government."**Claims.**

Bond issues.

Refund of amendment 13 municipal  
bond proceeds.

Filing of claims, §14-72-702.

Payment of claims, §14-58-305.

**Construction and interpretation.**Bond issues secured by parking meter  
funds.

Liberal construction, §14-57-602.

Manager form of government.

City manager enabling act of 1989.

Applicability of chapter,  
§14-61-102.

Liberal construction, §14-61-103.

Parking meters.

Liberal construction, §14-57-602.

Planning, §14-56-401.

**Contracts.**Execution of contracts by mayor and  
city clerk or recorder, §14-54-302.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Contracts** —Cont'd

Grants.

Federal grants, §14-54-108.

Public utilities, §14-54-704.

**Conveyances.**

Execution of conveyances, §14-54-302.

**Copies.**

Ordinances.

Adoption of technical codes by reference.

Filing copies, §14-55-207.

Printed or certified copies admissible in evidence, §14-55-402.

Duty of clerk or recorder to furnish, §14-55-402.

**Costs.**

Sanitation.

Clearance of unsightly and unsanitary conditions of real property.

Clearance by city upon refusal of owner, §14-54-903.

**Definitions.**

Manager form of government.

City manager enabling act of 1989.

City affected by this chapter, §14-61-102.

Ordinances.

Technical codes, §14-55-207.

Taxicab operators, §14-57-301.

Taxicabs, §14-57-301.

**Districts.**

Improvement districts.

See IMPROVEMENT DISTRICTS.

**Dogs.**

Preventing dogs from running at large.

Destruction, §14-54-1102.

Notice required prior to destruction of dog, §14-54-1102.

Taxation.

Dogs and domestic animals, §14-54-1103.

**Dollar-a-day act,** §14-55-603.**Drainage.**

Establishment and improvement, §14-54-601.

Assessments, §14-54-601.

Lien collectible as delinquent taxes, §14-54-604.

Method of assessing, §14-54-603.

Generally, §14-54-602.

**Education.**

Financial aid granted school districts, §14-58-501.

Funds from which school aid payable, §14-58-502.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Education** —Cont'd

Financial aid granted school districts

—Cont'd

Purpose, §14-58-501.

Terms of financial assistance grant, §14-58-503.

Nurses.

Training schools.

Authority of cities of the first class to establish, §14-54-801.

**Elections.**

Manager form of government. See within this heading, "Manager form of government."

Ordinances.

Referral to electors, §§14-55-301, 14-55-302.

Parking meters.

Bond issues secured by parking meter funds, §14-57-605.

**Electronic funds transfers.**

Disbursements by, §14-59-105.

**Eminent domain.**

Cities and towns on state line.

Powers with respect to public buildings, parks and streets, §14-54-106.

Exercise of condemnation right.

Procedure, §14-54-106.

Ordinances.

Passage for condemnation, §14-54-106.

Passage of ordinances for condemnation, §14-54-106.

Ordinances.

Cities and towns on state line.

Passage of condemnation ordinance, §14-54-106.

Parks and recreation.

Cities and towns on state line, §14-54-106.

**Entertainment.**

Public exhibitions and shows.

Power to regulate, §14-54-1405.

**Evidence.**

Ordinances.

Code prima facie evidence, §14-55-703.

Printed or certified copies admissible in evidence, §14-55-402.

Taxicabs.

Applications for permits.

Hearings on applications.

Introduction of evidence, §14-57-307.



**MUNICIPAL CORPORATIONS**

—Cont'd

**Excavations.**

Liability of adjoining landowner,  
§14-56-101.

Zoning, §14-56-101.

Liability of adjoining landowner,  
§14-56-101.

**Federal aid.**

Acceptance, §14-54-108.

Contracts for federal grants or  
assistance, §14-54-108.

**Fees.**

Ordinances.

Printed or certified copies admitted  
into evidence.

Furnishing by clerk or recorder,  
§14-55-402.

**Ferries.**

Power to regulate, §14-54-1403.

**Finance.**

Accounts and accounting. See within  
this heading, "Accounts and  
accounting."

Bond issues. See within this heading,  
"Bond issues."

Budgets.

General provisions, §§14-58-201 to  
14-58-203. See within this  
heading, "Budgets."

Committees.

Appointment, §14-58-301.

Employees, §14-58-301.

Salaries, §14-58-301.

Departments.

Creation, §14-58-301.

Employees, §14-58-301.

Salaries, §14-58-301.

Employees.

Committees, §14-58-301.

Departments, §14-58-301.

Public officers and employees.

Committee, §14-58-301.

Departments, §14-58-301.

Salaries.

Committees, §14-58-301.

Departments, §14-58-301.

Warrants for payment of money,  
§§14-58-601 to 14-58-605. See  
within this heading, "Warrants for  
payment of money."

**Firearms and ammunition**

regulation, §14-54-1411.

Local unit of government defined,  
§14-54-1411.

**Fiscal year,** §14-71-102.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Forms.**

Milk and milk products.

Ordinances regulating production,  
processing and sale of milk,  
§14-54-1202.

Parking meters.

Bond issues secured by parking  
meter funds, §14-57-606.

**Funds.**

Accounts and accounting.

Petty cash funds, §14-59-106.

Ice plants.

Construction and maintenance,  
§14-54-703.

**Gambling.**

Suppression of gambling.

Duty to enact ordinances,  
§14-55-103.

**Gifts.**

Parks and recreation.

Public recreation and playgrounds.

Acceptance of gifts and bequests,  
§14-54-1305.

Planning.

Metropolitan or regional planning  
commissions.

Receipt of gifts or donations,  
§14-56-508.

**Golf cart operation on streets.**

Municipality defined, §14-54-1410.

**Hackney coaches.**

Power to regulate, §14-54-1403.

**Health.**

General powers of cities and towns,  
§14-54-103.

Preserving health.

Purpose of ordinances, §14-55-102.

**Hearings.**

Taxicabs.

Applications for permits, §14-57-307.

Rates and charges, §14-57-303.

**Ice plants.**

Authority to construct, maintain and  
operate, §14-54-703.

Cities of the first and second class,  
§14-54-703.

Construction, maintenance and  
operation.

Funds, §14-54-703.

Funds for construction and  
maintenance, §14-54-703.

**Impeachment.**

Municipal districts.

General provisions.

See IMPROVEMENT DISTRICTS.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Impeachment —Cont'd**

- Municipal property owners' improvement districts, §§14-94-101 to 14-94-128.
- See MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICTS.

**Improvements.**

- Assessments, §14-54-601.
- Liens, §14-54-603.
- Collectible as delinquent taxes, §14-54-604.
- Method of assessing land, §14-54-603.
- Payment, §14-54-603.
- Generally, §14-54-601.
- Municipal property owners' improvement districts, §§14-94-101 to 14-94-128.
- See MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICTS.
- Urban service districts, §§14-95-101 to 14-95-610.
- See URBAN SERVICE DISTRICTS.

**Incorporation.**

- Body corporate and politic, §14-54-101.

**Industry.**

- New industries.
- Powers of cities and towns to aid in establishing, §14-54-107.

**Initiative and referendum.**

- Parking meters.
- Ordinances subject to initiative and referendum, §14-57-502.

**Insurance.**

- Bids.
- Purchases by cities of the first class, §14-58-304.
- Cities of the first class.
- Bids, §14-58-304.
- Motor vehicles.
- Motor carriers.
- Liability insurance, §14-57-202.

**Interest.**

- Bond issues.
- Refund of amendment 13 municipal bond proceeds.
- Disposition of principal and interest, §14-72-701.

**Joint services agreements.**

- Municipalities separated by state line.
- Administrative provisions included, §14-54-203.
- Approval by attorney general, §14-54-204.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Joint services agreements —Cont'd**

- Municipalities separated by state line —Cont'd

- Approval of state agencies, §14-54-205.
- Procedure, §14-54-205.
- When required, §14-54-205.
- Attorney general.
- Approval of agreements, §14-54-204.
- Authority to enter agreements, §14-54-202.
- Effective date of agreement.
- Ineffective until recorded, §14-54-206.
- Entering into agreements authorized, §14-54-202.
- Inclusion of administrative provisions, §14-54-203.
- Legislative intent, §14-54-201.
- Liability.
- Municipality liable for damages to state, §14-54-208.
- State, §14-54-208.
- Municipal obligations unaffected, §14-54-207.
- Obligations of municipalities unaffected, §14-54-207.
- Purpose of chapter, §14-54-201.
- Recordation, §14-54-206.
- Requirements, §14-54-203.
- Specifications in agreements or contracts, §14-54-203.
- State of Arkansas.
- Liability, §14-54-208.
- Status of interstate compact, §14-54-208.

**Jurisdiction.**

- Circuit courts.
- Planning.
- Jurisdiction on appeal, §14-56-425.
- Planning.
- Territorial jurisdiction, §14-56-413.
- Cities with population over 8,000 situated on navigable streams, §14-56-413.

**Leases.**

- Execution, §14-54-302.
- Personal property.
- Authorized, §14-54-302.
- Ownership of personal property.
- Authorized, §14-54-301.
- Real property.
- Authorized, §14-54-302.
- Ownership authorized, §14-54-301.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Liability.**

Joint services agreements.

Municipalities separated by state line.

Municipality liable for damages to state, §14-54-208.

Zoning.

Excavations.

Liability of adjoining landowner, §14-56-101.

**Licenses.**

Billiard halls.

Power to license, §14-54-1401.

Bowling alleys.

Power to license, §14-54-1401.

General powers of cities and towns, §14-54-103.

Pool rooms.

Power to license, §14-54-1401.

Taxicabs.

Minors in cities of the first class.

Not to be licensed to drive taxicabs, §14-57-403.

Proof of age required for driver's license, §14-57-404.

**Liens.**

Clearance of unsightly and unsanitary conditions of real property.

Clearance by city.

Enforcement of lien, §14-54-904.

Unknown or nonresident owners, §14-54-902.

Upon refusal of owners, §14-54-903.

Establishment and improvement of public grounds, §14-54-603.

Lien collectible as delinquent taxes, §14-54-604.

Improvements.

Assessments, §14-54-603.

Lien collectible as delinquent taxes, §14-54-604.

Loans.

Borrowing money by cities of first class for operating expenses.

Unpaid balances a lien, §14-58-402.

**Limitation of actions.**

Ordinances.

Suits for recovery of fines by cities and towns, §14-55-605.

**Livery stables.**

Power to regulate, §14-54-1404.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Livestock.**

Auctions.

Authority of municipal corporations to regulate or prohibit sale of horses, etc., in street auctions, §14-54-1104.

Driving stock into city.

Unlawful for city employee, §14-54-1101.

Preventing livestock from running at large, §14-54-1101.

Impoundment, §14-54-1101.

Notice, §14-54-1101.

Return to owner on payment of expenses, §14-54-1101.

**Loans.**

Borrowing money by cities of first class for operating expenses, §14-58-401.

Assignment of uncollected property taxes, §14-58-402.

Not to affect issued warrants, §14-58-403.

Certificates of indebtedness.

Issuance, §14-58-401.

Issued warrants not affected by assignments, §14-58-403.

Payment, §14-58-402.

Unpaid balances a lien, §14-58-402.

Issuance of evidences of indebtedness, §14-58-401.

Liens.

Unpaid balances a lien, §14-58-402.

Priority over new warrants, §14-58-403.

Liens.

Borrowing money by cities of first class for operating expenses.

Unpaid balances a lien, §14-58-402.

**Manager form of government.**

Boards of directors.

City manager enabling act of 1989.

Change in size of board, §14-61-105.

Compensation, §14-61-110.

Elections.

Designation of positions, §14-61-108.

Determination of ward positions, §14-61-109.

Methods, §14-61-107.

Options referred by ordinance, §14-61-114.



**MUNICIPAL CORPORATIONS**

—Cont'd

**Manager form of government**

—Cont'd

Boards of directors —Cont'd

City manager enabling act of 1989

—Cont'd

Elections —Cont'd

Selected by plurality vote,  
§14-61-112.Methods of selecting directors,  
§14-61-107.Options referred by ordinance,  
§14-61-114.

Removal of directors, §14-61-119.

Resignation of director running for  
mayor, §14-61-118.

Selection of directors.

Methods, §14-61-107.

Options referred by ordinance,  
§14-61-114.

Selection of mayors, §14-61-111.

Compensation.

City manager enabling act of  
1989, §14-61-110.

Elections.

City manager enabling act of  
1989.Designation of positions,  
§14-61-108.Determination of ward  
positions, §14-61-109.Methods of selecting,  
§14-61-107.Removal of directors,  
§14-61-119.Resignation of director running  
for mayor, §14-61-118.Selected by plurality vote,  
§14-61-112.Options referred by ordinance,  
§14-61-114.

Removal of directors.

City manager enabling act of  
1989, §14-61-119.

Mayors.

City manager enabling act of  
1989.

Selection of mayors, §14-61-111.

Removal of city directors.

City manager enabling act of  
1989, §14-61-119.

Selection of directors.

Methods, §14-61-107.

Cities of the first class, §§14-61-101 to  
14-61-119.

Applicability of chapter, §14-61-102.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Manager form of government**

—Cont'd

Cities of the first class —Cont'd

Board of directors.

Change in size, §14-61-105.

Compensation, §14-61-110.

Elections.

Designation of positions,  
§14-61-108.Determination of ward  
positions, §14-61-109.Methods of selecting,  
§14-61-107.Options referred by ordinance,  
§14-61-114.Removal of directors,  
§14-61-119.Resignation of director running  
for mayor, §14-61-118.Selected by plurality vote,  
§14-61-112.

Methods of selecting, §14-61-107.

Options referred by ordinance,  
§14-61-114.

Number of directors.

Change in size, §14-61-105.

Removal of directors, §14-61-119.

Resignation of director running for  
mayor, §14-61-118.

Selection of mayors, §14-61-111.

Size.

Change in size, §14-61-105.

Change in form of government  
under chapter.

Implementation, §14-61-117.

Citation of chapter.

Short title, §14-61-101.

City affected by this chapter.

Defined, §14-61-102.

Construction and interpretation.

Applicability of chapter,  
§14-61-102.

Liberal construction, §14-61-103.

Elections.

Board of directors.

Designation of positions,  
§14-61-108.Determination of ward  
positions, §14-61-109.Methods of selecting,  
§14-61-107.Options referred by ordinance,  
§14-61-114.Removal of directors,  
§14-61-119.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Manager form of government**

—Cont'd

Cities of the first class —Cont'd

Elections —Cont'd

Board of directors —Cont'd

Selected by plurality vote,  
§14-61-112.Initial organization as  
management form of  
government, §14-61-115.

Mayor, §14-61-111.

Removal of mayor, §14-61-119.

Resignation of director running  
for mayor, §14-61-118.Selected by plurality vote,  
§14-61-112.

Ordinances.

Options for selecting directors  
referred by ordinance,  
§14-61-114.

Petitions.

Special elections under chapter,  
§14-61-113.Removal of directors or mayors,  
§14-61-119.Reorganization election by city  
with management form of  
government, §14-61-116.

Special elections.

Petition process for, §14-61-113.

Existing procedures.

Ratification, §14-61-104.

Forms.

Initial organization as  
management form of  
government.

Ballots, §14-61-115.

Implementation of change in form of  
government under chapter,  
§14-61-117.Initial organization as management  
form of government, §14-61-115.Liberal construction of chapter,  
§14-61-103.

Mayors.

Compensation, §14-61-110.

Election from at-large position.

Voting last in board proceedings,  
§14-61-106.

Elections, §14-61-111.

Removal of mayor, §14-61-119.

Selected by plurality vote,  
§14-61-112.

Removal, §14-61-119.

Resignation of director running for  
mayor, §14-61-118.**MUNICIPAL CORPORATIONS**

—Cont'd

**Manager form of government**

—Cont'd

Cities of the first class —Cont'd

Mayors —Cont'd

Selection, §14-61-111.

Ordinances.

Methods of selecting directors.

Options referred by ordinance,  
§14-61-114.Organization as management form  
of government.

Initial organization, §14-61-115.

Petitions.

Removal of directors or mayors,  
§14-61-119.

Special elections under chapter.

Petition process for, §14-61-113.

Ratification of existing procedures,  
§14-61-104.Reorganization election by city with  
management form of  
government, §14-61-116.

Short title, §14-61-101.

Title of chapter.

Short title, §14-61-101.

City manager enabling act of 1989.

Cities of the first class, §§14-61-101  
to 14-61-119. See within this  
subheading, "Cities of the first  
class."

Elections.

City manager enabling act of 1989.

Board of directors.

Designation of positions,  
§14-61-108.Determination of ward  
positions, §14-61-109.Methods of selecting,  
§14-61-107.Options referred by ordinance,  
§14-61-114.Selected by plurality vote,  
§14-61-112.Initial organization as  
management form of  
government, §14-61-115.

Mayors, §14-61-111.

Selected by plurality vote,  
§14-61-112.Removal of directors or mayors,  
§14-61-119.Reorganization election by city  
with management form of  
government, §14-61-116.Resignation of director running for  
mayor, §14-61-118.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Manager form of government**

—Cont'd

Elections —Cont'd

City manager enabling act of 1989

—Cont'd

Special elections.

Petition process for, §14-61-113.

Cumulative voting for directors,  
§14-61-120.Limited voting for directors,  
§14-61-120.

Mayors.

City manager enabling act of  
1989, §14-61-111.Selected by plurality vote,  
§14-61-112.

Petitions.

City manager enabling act of  
1989.Petition process for special  
elections under chapter,  
§14-61-113.

Removal of city director.

City manager enabling act of  
1989, §14-61-119.

Special elections.

City manager enabling act of  
1989.

Petition process for, §14-61-113.

Forms.

Ballots.

City manager enabling act of  
1989, §14-61-115.

City manager enabling act of 1989.

Ballots.

Initial organization as  
management form of  
government, §14-61-115.

Mayors.

City manager enabling act of 1989.

Compensation, §14-61-110.

Direct election of mayor from  
at-large position.Voting last in board proceedings,  
§14-61-106.

Elections, §14-61-111.

Selected by plurality vote,  
§14-61-112.Removal of director or mayor,  
§14-61-119.Resignation of director running for  
mayor, §14-61-118.

Selection, §14-61-111.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Manager form of government**

—Cont'd

Mayors —Cont'd

Elections.

City manager enabling act of  
1989, §14-61-111.Removal of director or mayor,  
§14-61-119.Resignation of director running  
for mayor, §14-61-118.Selected by plurality vote,  
§14-61-112.

Removal of mayor.

City manager enabling act of  
1989, §14-61-119.

Ordinances.

City manager enabling act of 1989.

Methods of selecting directors.

Options referred by ordinance,  
§14-61-114.

Petitions.

City manager enabling act of 1989.

Removal of directors or mayors,  
§14-61-119.

Special elections.

Petition process for, §14-61-113.

Removal of city director.

City manager enabling act of  
1989, §14-61-119.**Maps and plats.**

Shopping centers.

Control of areas adjacent to  
shopping centers.

Plat of area, §14-54-502.

**Metropolitan or regional planning  
commissions.** See within this  
heading, "Planning."**Milk and milk products.**Regulation of production, processing  
and sale.

Authority to regulate, §14-54-1201.

Passage of ordinance,  
§14-54-1202.

Form of ordinance, §14-54-1202.

Ordinances.

Form of ordinance, §14-54-1202.

Power to regulate, §14-54-1201.

**Minors.**

Taxicabs.

Unlawful operation of taxicabs  
generally, §§14-57-401 to  
14-57-404. See within this  
heading, "Taxicabs."



**MUNICIPAL CORPORATIONS**

—Cont'd

**Misdemeanors.**

Animals.

Unlawful for city employee to drive stock into city, §14-54-1101.

Planning.

Violations of ordinances and regulations, §14-56-421.

**Motion pictures.**

Laws permitting shows on Sunday unaffected, §14-54-1402.

**Motor carriers.**

Bonds, surety.

Cash bond as compliance, §14-57-202.

Indemnity bonds, §14-57-202.

Indemnity bonds, §14-57-202.

Insurance.

Liability insurance, §14-57-202.

Liability insurance, §14-57-202.

Regulation, §14-57-201.

Taxation, §14-57-201.

**Motorcycles.**

Tax on wheeled vehicles, §14-57-104.

**Motor vehicles.**

Accounts and accounting.

Privilege tax.

Separate bank account for collections, §14-57-712.

Bonds, surety.

Motor carriers, §14-57-202.

Cities of the first class.

Minors.

Not to be licensed to drive taxicabs, §14-57-403.

Unlawful to operate taxi service or drive taxicabs, §14-57-402.

Regulation of taxicabs and omnibuses, §14-57-302.

Taxicabs regulated, §14-57-302.

Tax on wheeled vehicles, §14-57-104.

Insurance.

Motor carriers.

Liability insurance or indemnity bonds, §14-57-202.

Motor carriers.

Bonds, surety.

Cash bond as compliance, §14-57-202.

Indemnity bonds of motor carriers, §14-57-202.

Indemnity bonds, §14-57-202.

Liability insurance or indemnity bonds, §14-57-202.

Regulation, §14-57-201.

Taxation, §14-57-201.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Motor vehicles —Cont'd**

Ordinances.

Prohibiting unlawful riding, §14-57-102.

Parking meters.

General provisions, §§14-57-501 to 14-57-610. See within this heading, "Parking meters."

Penalties.

Taxation.

Privilege tax.

Delinquency, §§14-57-701, 14-57-708.

Stickers.

Payment of privilege tax, §14-57-711.

Tags.

Payment of privilege tax, §14-57-711.

Taxation.

Motor carriers, §14-57-201.

Motorcycles.

Tax on wheeled vehicles, §14-57-104.

Privilege tax, §14-57-702.

Classification of vehicles, §14-57-705.

Collection of tax, §14-57-711.

Separate bank account for collections, §14-57-712.

Contents of receipt, §14-57-711.

Delinquency.

Penalty, §§14-57-701, 14-57-708.

Designation of official to collect tax, §14-57-711.

Due date, §14-57-707.

Elections.

Special election required, §14-57-704.

Exclusive nature of provisions, §14-57-703.

Issuance of tag or sticker, §14-57-711.

Levy of tax, §14-57-702.

Maximum tax, §14-57-706.

Other taxation prohibited, §14-57-703.

Payment.

Date due, §14-57-707.

Delinquent payments, penalties, §§14-57-701, 14-57-708.

One municipality only, §14-57-710.

Penalties.

Delinquency, §§14-57-701, 14-57-708.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Motor vehicles** —Cont'd

Taxation —Cont'd

Privilege tax —Cont'd  
Rate.Classification of vehicles,  
§14-57-705.

Maximum tax, §14-57-706.

Vehicle acquired after July 1,  
§14-57-709.Separate bank account for  
collections, §14-57-201.Special election required,  
§14-57-704.Use of revenue after expenses,  
§14-57-712.Vehicles acquired after July 1,  
§14-57-709.

Wheeled vehicles, §14-57-104.

Bicycles excepted, §14-57-104.

Cities of the first class,  
§14-57-104.

Taxicabs.

General provisions, §§14-57-301 to  
14-57-308. See within this  
heading, "Taxicabs."

Tires.

Width.

Regulation, §14-57-103.

Unlawful riding.

Power to prohibit, §14-57-102.

**Municipal property owners'  
improvement districts,**

§§14-94-101 to 14-94-128.

See MUNICIPAL PROPERTY  
OWNERS' IMPROVEMENT  
DISTRICTS.**Name,** §14-54-101.**Notice.**

Animals.

Impoundment of stock, §14-54-1101.

Bond issues.

Refund of amendment 13 municipal  
bond proceeds.

Publication of notice, §14-72-703.

Dogs.

Preventing dogs from running at  
large.

Destruction.

Notice required prior to  
destruction of dog,  
§14-54-1102.

Livestock.

Impoundment of stock, §14-54-101.

Ordinances.

Adoption of technical codes by  
reference, §14-55-207.**MUNICIPAL CORPORATIONS**

—Cont'd

**Notice** —Cont'd

Sanitation.

Clearance of unsightly and  
unsanitary conditions of real  
property.Unknown or nonresident owners,  
§14-54-902.

Taxicabs.

Applications for permits.

Hearings on application,  
§14-57-307.

Rates and charges, §14-57-303.

Warrants for payment of money.

Redemption and reissuance.

Time and place, §14-58-603.

**Nuisances.**

Penalties.

Zoning.

Continued use in disregard of  
setback line, §14-56-304.

Zoning.

Continued use in disregard of  
setback line, §14-56-304.

Penalties, §14-56-304.

**Nurses.**

Training schools.

Authority of cities of the first class  
to establish, §14-54-801.**Obscenity.**Punishment of lewd and lascivious  
behavior in public places.

Ordinances.

Duty to enact ordinances,  
§14-55-103.**Officers.**

Bonds, surety.

Cities of the first class, §14-58-308.

**Ordinances.**

Adopted ordinances.

Referral to electors, §14-54-301.

Amendments.

Authorized, §14-55-704.

Filing, §14-55-704.

Appropriations.

Requirements for approval,  
§14-55-204.

Authentication, §14-55-205.

Authority to enact ordinances,  
§14-55-101.

Biogenic gases.

Processing crude biogenic gases.

Lease, sale or conveyance of real  
property for.Implementing legislation,  
§14-54-403.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Ordinances** —Cont'd

Codes.

Adoption of technical code by  
reference, §14-55-207.Codes open to public examination,  
§14-55-207.

Copies.

Filing, §14-55-207.

Definition of technical codes,  
§14-55-207.

Filing copies, §14-55-207.

Notice, §14-55-207.

Codification authorized, §14-55-701.

Copies of code.

Filing, §14-55-702.

Evidentiary effect of code,  
§14-55-703.Continuation of existing ordinances,  
§14-55-401.

Copies.

Duty of clerk or recorder to furnish,  
§14-55-402.

Fees, §14-55-402.

Printed or certified copies admissible  
in evidence, §14-55-402.

Duty to enact, §14-55-103.

Elections.

Procedure for referral of ordinances,  
§14-55-301.Referral of adopted ordinances to  
electors, §14-55-301.Referral of proposed ordinances to  
electors, §14-55-301.

Eminent domain.

Cities and towns on state line.

Passage of condemnation  
ordinance, §14-54-106.

Enactment.

Authority to enact, §14-55-101.

Duty to enact, §14-55-103.

Enforcement of ordinances,  
§14-55-601.

Penalties, §14-55-601.

Recovery of fines, §14-55-601.

Evidence.

Code of prima facie evidence,  
§14-55-703.Printed or certified copies admissible  
in evidence, §14-55-402.Existing ordinances continued in force,  
§14-55-401.

Fees.

Copies, §14-55-402.

Imprisonment to enforce fines.

Authority of cities to require,  
§14-55-602.**MUNICIPAL CORPORATIONS**

—Cont'd

**Ordinances** —Cont'd

Imprisonment to enforce fines —Cont'd

Persons in jail for violation of city or  
town ordinances.Working on streets and  
improvements authorized,  
§14-55-603.Use of county jail for imprisonment,  
§14-55-602.Manager form of government. See  
within this heading, "Manager  
form of government."Maximum penalties permitted,  
§14-55-504.

Milk and milk products.

Regulating production, processing  
and sale of milk.

Form of ordinance, §14-54-1202.

Motor vehicles.

Power to prohibit unlawful riding,  
§14-57-102.

Notice.

Adoption of technical codes by  
reference, §14-55-207.

Parking meters.

Authorized, §14-57-602.

Bond issues secured by parking  
meter funds, §14-57-605.Initiative and referendum,  
§14-57-502.Subject to initiative and referendum,  
§14-57-502.

Passage.

Reading requirement, §14-55-202.

Requirements.

Reading requirement, §14-55-202.

Voting requirements, §14-55-203.

Voting requirements, §14-55-203.

Penalties.

Additional remedies of cities of the  
first class, §14-55-606.Additional remedies of cities of the  
second class, §14-55-607.Authority to prescribe penalties,  
§§14-55-501, 14-55-502.

Conviction under ordinance.

Effect, §14-55-503.

Enforcement of ordinances,  
§14-55-601.

Recovery of fines, §14-55-601.

Fines.

Authority of cities to require  
imprisonment to enforce fine,  
§14-55-602.Paid into city or town treasury,  
§14-55-608.



**MUNICIPAL CORPORATIONS**

—Cont'd

**Ordinances —Cont'd**

Penalties —Cont'd

Fines —Cont'd

Working out fines on streets and alleys, §14-55-604.

Maximum penalties permitted, §14-55-504.

Suits for recovery of fines by cities and towns, §14-55-605.

Additional remedies of cities of the first class, §14-55-606.

Additional remedies of cities of the second class, §14-55-607.

Limitation of actions, §14-55-605.

**Planning.**

Adoption, §§14-56-420, 14-56-422.

Amendment, §§14-56-420, 14-56-423.

Enforcement, §14-56-421.

Existing ordinances, §14-56-424.

Recommended ordinances,

§§14-56-411, 14-56-415.

Setback ordinance, §14-56-418.

Zoning ordinance, §14-56-416.

Publication or posting, §14-55-206.

Purposes, §14-55-102.

Only one subject, §14-55-201.

Reading requirement, §14-55-202.

Recordation, §14-55-205.

Referral of ordinances to electors, §14-55-301.

Enacted ordinances, §14-55-302.

Procedure for referral, §14-55-301.

Proposed or adopted ordinances, §14-55-301.

Revision authorized, §14-55-701.

**Shopping centers.**

Control of areas adjacent to shopping centers, §§14-54-501 to 14-54-503.

**Subjects.**

Only one subject, §14-55-201.

Zoning, §14-56-416.

**Parking meters.**

Authorized, §14-57-501.

Bond issues secured by parking meter funds, §14-57-605.

Acceleration of maturities in case of default, §14-57-610.

Act exclusive, §14-57-603.

Default in payment of bonds, §14-57-609.

Acceleration of maturities in case of default, §14-57-610.

Priorities between successive issues, §14-57-610.

Receivers, §14-57-609.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Parking meters —Cont'd**

Bond issues secured by parking meter funds —Cont'd

Discontinuing operation of parking meters.

Pledge not to discontinue, §14-57-608.

Elections, §14-57-605.

Exclusive nature of act, §14-57-603.

Forms, §14-57-606.

Liberal construction, §14-57-602.

Ordinances, §14-57-605.

Payable from parking meter funds, §14-57-607.

Pledge of parking meter funds, §14-57-607.

Pledge not to discontinue operation of parking meters, §14-57-608.

Receivers, §14-57-609.

Sales, §14-57-606.

**Definitions.**

Revenues, §14-57-601.

**Elections.**

Bond issues secured by parking meter funds, §14-57-605.

**Initiative and referendum.**

Ordinances subject to, §14-57-502.

**Ordinances.**

Authorized, §14-57-501.

Bond issues secured by parking meter funds, §14-57-605.

Initiative and referendum, §14-57-502.

Subject to initiative and referendum, §14-57-502.

**Revenues, §14-57-601.**

Definitions, §14-57-601.

Use, §14-57-604.

Scope of revenue uses, §14-57-604.

**Parks and recreation.****Eminent domain.**

Cities and towns on state line.

Passage of condemnation ordinances, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise, §14-54-106.

**Public recreation and playgrounds.****Directors.**

Employment, §14-54-1308.

**Funding.**

Powers, §14-54-1301.

School funds.

Use, §14-54-1304.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Parks and recreation —Cont'd**

Public recreation and playgrounds

—Cont'd

Funding —Cont'd

State aid not to be used,  
§14-54-1303.

Gifts and bequests.

Acceptance, §14-54-1305.

Instructors.

Employment, §14-54-1308.

Powers as to, §§14-54-1301,  
14-54-1302.

Private property.

Use for activities, §14-54-1306.

Property used for, §14-54-1306.

School facilities, §14-54-1307.

School facilities.

Use, §14-54-1307.

School funds.

Use, §14-54-1304.

State aid not to be used,  
§14-54-1303.**Penalties.**

Motor vehicles.

Taxation.

Privilege tax.

Delinquency, §§14-57-701,  
14-57-708.

Nuisances.

Zoning.

Continued use in disregard of  
setback line, §14-56-304.

Ordinances.

Additional remedies of cities of the  
first class, §14-55-606.Additional remedies of cities of the  
second class, §14-55-607.Authority to prescribe penalties,  
§§14-55-501, 14-55-502.

Conviction under ordinance.

Effect, §14-55-503.

Enforcement of ordinances,  
§14-55-601.

Fines.

Authority of cities to require  
imprisonment to enforce fine,  
§14-55-602.Paid into city or town treasury,  
§14-55-608.Working out fines on streets and  
alleys, §14-55-604.Maximum penalties permitted,  
§14-55-504.Suits for recovery of fines by cities  
and towns, §14-55-605.Additional remedies by cities of  
the first class, §14-55-606.**MUNICIPAL CORPORATIONS**

—Cont'd

**Penalties —Cont'd**

Ordinances —Cont'd

Suits for recovery of fines by cities  
and towns —Cont'dAdditional remedies of cities of the  
second class, §14-55-607.

Limitation of actions, §14-55-605.

Shopping centers.

Control of areas adjacent to  
shopping centers.Violations of ordinances,  
§14-54-503.

Taxicabs.

Cities of the first class.

Employing minor to drive taxicab,  
§14-57-401.

Zoning.

Continued use in disregard of  
setback line, §14-56-304.**Permits.**

Buildings.

Cities of the first class.

Construction permits, §14-56-202.

Construction permits, §14-56-202.

Taxicabs, §§14-57-304 to 14-57-308.

**Personal property.**

Leases.

Authorized, §14-54-302.

Ownership authorized, §14-54-301.

Purchases.

Authorized, §14-54-302.

Sales.

Authorized, §14-54-302.

**Petitions.**

Elections.

Manager form of government.

City manager enabling act of  
1989.Special elections under chapter,  
petition process for,  
§14-61-113.Manager form of government. See  
within this heading, "Manager  
form of government."**Planning.**

Air Force military installations.

Control of property use, §14-56-426.

Appropriations, §14-56-410.

Appeals.

Circuit courts.

Jurisdiction on appeal,  
§14-56-425.

Circuit courts.

Jurisdiction on appeal, §14-56-425.

Jurisdiction.

Appeals.

Circuit courts, §14-56-425.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Planning** —Cont'd

Appropriations —Cont'd

Jurisdiction —Cont'd

Circuit courts.

Appeals, §14-56-425.

Metropolitan or regional planning commissions, §14-56-509.

Change in plans, §14-56-423.

Cities of the first class.

Powers as to, §14-56-402.

Cities of the second class.

Powers as to, §14-56-402.

Commissions.

Appointment of members, §14-56-405.

Compensation of members, §14-56-409.

Creation, §14-56-404.

Duties, §14-56-412.

Meetings, §14-56-407.

Number of members, §14-56-404.

Officers, §14-56-406.

Terms of office, §14-56-406.

Powers, §§14-56-404, 14-56-412.

Preparation of plans, §§14-56-411, 14-56-414.

Purposes, §14-56-411.

Recommendations, §§14-56-411, 14-56-415.

Records, §14-56-407.

Rules and regulations, §14-56-408.

Generally. See within this subheading, "Rules and regulations."

Terms of members, §14-56-405.

Community facilities plan, §14-56-414.

Construction and interpretation, §14-56-401.

Existing plans, §14-56-424.

Jurisdiction.

Territorial jurisdiction, §14-56-413.

Cities of 8,000 to 50,000 population located on navigable streams, §14-56-413.

Cities of 50,000 to 150,000 situated on navigable streams, §14-56-413.

Cities of 150,000 or more situated on navigable streams, §14-56-413.

Land use plan, §14-56-414.

Master street plan, §14-56-414.

Road entry.

Control, §14-56-419.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Planning** —Cont'd

Metropolitan or regional planning commissions.

Appropriations, §14-56-509.

Authorized, §14-56-502.

Duties, §§14-56-506, 14-56-507.

Effect of provisions, §14-56-501.

Establishment, §14-56-504.

Authorized, §14-56-502.

Joint agreement, §14-56-503.

Purposes, §14-56-505.

Functions, §14-56-506.

Funds.

Receipt of funds, §14-56-508.

Gifts.

Receipt of gifts and donations, §14-56-508.

Joint agreement, §14-56-503.

Powers, §§14-56-504, 14-56-507.

Purposes, §14-56-505.

Recommendations, §14-56-507.

Supplemental nature of provisions, §14-56-501.

Misdemeanors.

Violations of ordinances and regulations, §14-56-421.

Ordinances.

Adoption, §§14-56-420, 14-56-422.

Amendment, §§14-56-420, 14-56-423.

Enforcement, §14-56-421.

Existing ordinances, §14-56-424.

Recommended ordinances, §§14-56-411, 14-56-415.

Setback ordinance, §14-56-418.

Zoning ordinance, §14-56-416.

Preparation of plans, §§14-56-411, 14-56-414.

Purpose of plans, §14-56-403.

Road entry.

Control, §14-56-419.

Rules and regulations.

Adoption, §§14-56-420, 14-56-422.

Amendment, §§14-56-420, 14-56-423.

Commissions, §14-56-408.

Control of land development, §14-56-417.

Enforcement, §14-56-421.

Existing regulations, §14-56-424.

Towns.

Powers as to, §14-56-402.

Zoning.

Ordinances.

Zoning ordinance, §14-56-416.



**MUNICIPAL CORPORATIONS**

—Cont'd

**Playgrounds.**

Public recreation and playgrounds,  
§§14-54-1301 to 14-54-1308. See  
within this heading, "Parks and  
recreation."

**Police departments.**

General powers of cities and towns,  
§14-54-103.

**Pollution.**

Water pollution.  
Grants and bonds for control  
projects.  
Revenue bonds for repayment,  
§14-72-101.

**Pool rooms.**

Licenses.  
Power to license, §14-54-1401.  
Power to license, regulate, tax,  
prohibit or suppress, §14-54-1401.  
Taxation.  
Power to tax, §14-54-1401.

**Powers, §14-54-101.**

Cities of the first class.  
Additional powers, §14-54-104.  
Cities of the second class.  
Additional powers, §14-54-105.  
General powers and privileges,  
§14-54-102.  
Enumeration, §14-54-103.  
Subject to rules and regulations of act,  
§14-54-102.

**Privileges, §14-54-101.****Property owners' improvement districts.**

General provisions, §§14-93-101 to  
14-93-133.  
See PROPERTY OWNERS'  
IMPROVEMENT DISTRICTS.  
Municipal property owners'  
improvement districts,  
§§14-94-101 to 14-94-128.  
See MUNICIPAL PROPERTY  
OWNERS' IMPROVEMENT  
DISTRICTS.  
Services turned over to municipality,  
§14-93-130.

**Prostitution.**

Powers of cities to punish prostitutes,  
§14-54-1408.

**Publication.**

Accounts and accounting.  
Financial statements, §14-59-116.  
By posting, §14-59-116.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Publication —Cont'd**

Bond issues.  
Refund of amendment 13 municipal  
bond proceeds.  
Publication of notice, §14-72-703.  
Ordinances, §14-55-206.

**Public utilities.**

Acquisition, §14-54-701.  
Assignments or transfers, §14-54-704.  
Authorization of utilities and street  
railroads, §14-54-701.  
Construction of utilities, §14-54-701.  
Contracts, §14-54-704.  
Purchase of power for resale,  
§14-54-701.  
Rates and charges.  
Regulation of rates, §14-54-704.  
Regulation of rates, §14-54-704.  
Rights of improvement districts,  
§14-54-701.  
Street railroads.  
Construction and acquisition,  
§14-54-701.  
Contracts for providing, §14-54-704.  
Regulation of rates, §14-54-704.

**Purchasing.**

Bids, §14-58-303.  
Sale or exchange of supplies, materials  
or equipment, §14-58-306.

**Rates and charges.**

Public utilities.  
Regulation of rates, §14-54-704.  
Taxicabs, §14-57-303.  
Exclusive powers to regulate rates,  
§14-57-302.

**Real property.**

Contracts.  
Execution, §14-54-302.  
Conveyances.  
Execution, §14-54-302.  
Leases.  
Authorized, §14-54-302.  
Execution, §14-54-302.  
Ownership authorized, §14-54-301.  
Purchases.  
Authorized, §14-54-302.  
Sale.  
Authorized, §14-54-302.  
Towns.  
Authority of incorporated towns,  
§14-54-303.

**Receivers.**

Parking meters.  
Bond issues secured by parking  
meter funds.  
Default in payment of bonds,  
§14-57-609.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Records.**

- Accounts and accounting.
- Fixed asset records, §14-59-107.
- Maintenance of accounting records,  
§14-59-114.

**Regional planning.**

- Metropolitan or regional planning commissions. See within this heading, "Planning."

**Rent control.**

- Local governmental unit defined,  
§14-54-1409.
- Preemption, §14-54-1409.

**Reports.**

- Accounts and accounting.
- Submission of reports, §14-59-115.
- Budgets.
- Annual financial reports,  
§14-58-302.

**Riots.**

- Suppressing riots.
- Ordinances.
- Duty to enact ordinances,  
§14-55-103.

**Rules and regulations.**

- Planning.
- Adoption, §§14-56-420, 14-56-422.
- Amendment, §§14-56-420, 14-56-423.
- Commissions, §14-56-408.
- Control of land development,  
§14-56-417.
- Enforcement, §14-56-421.
- Existing regulations, §14-56-424.

**Running at large.**

- Preventing livestock from running at large, §14-54-1101.

**Sales.**

- Parking meters.
- Bond issues secured by parking meter funds, §14-57-606.
- Personal property.
- Authorized, §14-54-302.
- Purchases and supplies.
- Sale or exchange of materials, supplies or equipment,  
§14-58-306.
- Real property.
- Authorized, §14-54-302.

**Sanitation.**

- Clearance of unsightly and unsanitary conditions of real property,  
§14-54-901.
- Attorneys ad litem.
- Unknown or nonresident owners,  
§14-54-902.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Sanitation —Cont'd**

- Clearance of unsightly and unsanitary conditions of real property
- Cont'd

Clearance by city upon refusal of owner, §14-54-903.

Costs, §14-54-903.

Enforcement of lien, §14-54-904.

Costs.

Clearance by city upon refusal of owner, §14-54-903.

Enforcement of lien for clearance by city, §14-54-904.

Liens.

Enforcement of lien for clearance by city, §14-54-904.

Notice.

Unknown or nonresident owners,  
§14-54-902.

Unknown or nonresident owners.

Attorney ad litem, §14-54-902.

Notice by publication, §14-54-902.

Notice.

Clearance of unsightly and unsanitary conditions of real property.

Unknown or nonresident owners,  
§14-54-902.

**Sewers.**

Establishment and improvement,  
§14-54-601.

Assessments, §14-54-601.

Liens, §14-54-603.

Collectible as delinquent taxes,  
§14-54-604.

Method of assessing, §14-54-603.

Payment, §14-54-603.

**Shopping centers.**

Control of areas adjacent to shopping centers.

Arrests.

Policing of area, §14-54-504.

Authorized, §14-54-501.

Ordinances.

Authorized, §14-54-501.

Penalty for violation, §14-54-503.

Plat of area as prerequisite,  
§14-54-502.

Plat of area, §14-54-502.

Policing of area, §14-54-504.

Signs.

Posting, §14-54-503.

Tort liability.

Provisions not to affect,  
§14-54-505.

**MUNICIPAL CORPORATIONS**

—Cont'd

**State of Arkansas.**

Joint services agreements.

Municipalities separated by state line.

Liability of state, §14-54-208.

Municipality liable for damages to state, §14-54-208.

**Streets.**

Eminent domain.

Cities and towns on state line.

Passage of condemnation ordinance, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise, §14-54-106.

Establishment and improvement, §14-54-601.

Assessment, §14-54-601.

Liens, §14-54-603.

Collectible as delinquent taxes, §14-54-604.

Method of assessing land, §14-54-603.

Payment, §14-54-603.

Golf cart operation, §14-54-1410.

Ordinances.

Persons in jail for violation of city or town ordinances.

Work on streets and improvements authorized, §14-55-603.

Working out fines on streets and alleys, §14-55-604.

**Sundays.**

Operation of businesses on Sunday.

Authority to regulate, §14-54-1402.

Motion picture show laws unaffected, §14-54-1402.

**Taxation.**

Animals.

Dogs and domestic animals, §14-54-1103.

Billiard halls.

Power to tax, §14-54-1401.

Bowling alleys.

Power to tax, §14-54-1401.

General powers of cities and towns, §14-54-103.

Motor vehicles. See within this heading, "Motor vehicles."

Pool rooms.

Power to tax, §14-54-1401.

Unplatted lots tax, §14-58-603.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Taxicabs.**

Age.

Drivers' licenses.

Proof of age required, §14-57-404.

Appeals.

Rates and charges, §14-57-303.

Bonds, surety.

Permits to operate, §14-57-306.

Definitions, §14-57-301.

Taxicab operators, §14-57-301.

Evidence.

Applications for permits.

Hearings on applications.

Introduction of evidence, §14-57-307.

Hearings.

Applications for permits, §14-57-307.

Rates and charges, §14-57-303.

Licenses.

Minors in cities of the first class.

Not to be licensed to drive taxicabs, §14-57-403.

Proof of age required for driver's license, §14-57-404.

Minors.

Cities of the first class.

Unlawful to operate taxi service or taxicabs, §14-57-402.

Jitney service prohibited also, §14-57-304.

Licenses, minors not to be licensed to drive taxicabs, §14-57-403.

Licenses, proof of age required, §14-57-404.

Minors not to be licensed, §14-57-403.

Penalties, §14-57-401.

Proof of age required for taxicab driver's license, §14-57-404.

Notice.

Applications for permits.

Hearings on application, §14-57-307.

Rates and charges, §14-57-303.

Penalties.

Cities of the first class.

Employing minor to drive taxicab, §14-57-401.

Permits to operate, §14-57-304.

Applications, §14-57-305.

Appeals.

Judicial review, §14-57-308.

Evidence.

Hearings, §14-57-307.



**MUNICIPAL CORPORATIONS**

—Cont'd

**Taxicabs —Cont'd**

Permits to operate —Cont'd

Applications —Cont'd

Hearings, §14-57-307.

Evidence, §14-57-307.

Interested parties, §14-57-307.

Introduction of evidence,  
§14-57-307.

Notice, §14-57-307.

Judicial review, §14-57-308.

Notice.

Hearings, §14-57-307.

Bonds, surety, §14-57-306.

Applications.

Required, §14-57-305.

Evidence.

Applications.

Hearings, §14-57-307.

Hearings.

Applications, §14-57-307.

Granting or refusal authorized,  
§14-57-304.

Notice.

Applications.

Hearings, §14-57-307.

Hearings.

Applications, §14-57-307.

Rates and charges, §14-57-303.

Appeals, §14-57-303.

Exclusive powers to regulate rates,  
§14-57-302.

Hearings, §14-57-303.

Judicial review, §14-57-303.

Notice, §14-57-303.

Regulation, §14-57-101.

Exclusive power to regulate,  
§14-57-302.**Torts.**

Shopping centers.

Control of areas adjacent to  
shopping centers.Tort liability unaffected,  
§14-54-505.**Towns.**

Authority of incorporated towns.

Real property, §14-54-303.

Planning.

Powers as to, §14-56-402.

Real property.

Authority of incorporated towns,  
§14-54-303.**Transient vendors.**

Power to regulate, §14-54-1407.

**United States.**

Federal grants.

Acceptance, §14-54-108.

Contracts for, §14-54-108.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Urban service districts, §§14-95-101  
to 14-95-610.**

See URBAN SERVICE DISTRICTS.

**Vagrants.**Powers of cities to punish,  
§14-54-1408.**Warrants for payment of money.**Annual call of outstanding warrants,  
§14-58-602.Calling in outstanding warrants,  
§14-58-601.Annual call of outstanding warrants,  
§14-58-602.

Debarred warrants.

Warrants not presented for  
redemption or reissuance  
debarred, §14-58-604.

Notice.

Redemption and reissuance.

Time and place, §14-58-603.

Redemption and reissuance.

Annual call of outstanding warrants,  
§14-58-602.Calling in outstanding warrants,  
§14-58-601.

Notice of time and place, §14-58-603.

Scrip or warrants rejected by  
council, §14-58-605.Warrants not presented debarred  
thereafter, §14-58-604.Scrip or warrants rejected by council,  
§14-58-605.**Water supply and waterworks.**Construction or acquisition of  
waterworks, §14-54-702.

Injury to waterworks.

Prohibiting, §14-54-702.

Prohibiting pollution of water,  
§14-54-702.**Workers' compensation.**

Coverage, §14-60-101.

Date of coverage, §14-60-102.

Private carrier.

Coverage through, §14-60-104.

Responsibility for providing,  
§14-60-103.

Self-funding groups.

Coverage through, §14-60-104.

Date of coverage, §14-60-102.

Employee coverage required,  
§14-60-101.Municipalities over 150,000,  
§14-60-106.

Municipalities over 70,000, §14-60-105.

Private carrier.

Coverage through, §14-60-104.

**MUNICIPAL CORPORATIONS**

—Cont'd

**Workers' compensation** —Cont'd

Private carrier —Cont'd

Municipalities over 150,000,  
§14-60-106.Municipalities over 70,000,  
§14-60-105.

Requirement, §14-60-101.

Responsibility for providing,  
§14-60-103.

Self-funding groups.

Coverage through, §14-60-104.

Municipalities over 150,000,  
§14-60-106.Municipalities over 70,000,  
§14-60-105.**Year.**

Fiscal year, §14-71-102.

**Zoning.**Air Force military installation areas,  
§14-56-426.

Buildings.

Conformity to zoning ordinances,  
§14-56-305.

Exceptions, §14-56-305.

Businesses.

Conformity to zoning ordinances,  
§14-56-305.

Classes of zones, §14-56-301.

Establishment of zones, §14-56-301.

Three classes, §14-56-301.

Excavations, §14-56-101.

Liability of adjoining landowner,  
§14-56-101.

Height restrictions, §14-56-303.

Purpose, §14-56-303.

Liability.

Excavations.

Liability of adjoining landowner,  
§14-56-101.

Ordinances, §14-56-416.

Penalties.

Continued use in disregard of  
setback line, §14-56-304.

Planning.

Ordinances.

Zoning ordinance, §14-56-416.

Setbacks.

Cities of the second class,  
§14-56-304.Continued use in disregard of  
setback line, §14-56-304.

Declared nuisance, §14-56-304.

Penalties, §14-56-304.

Petitions to establish, §14-56-304.

Contents, §14-56-304.

Requirements, §14-56-304.

**MUNICIPAL IMPROVEMENT  
DISTRICTS.**

See IMPROVEMENT DISTRICTS.

**MUNICIPAL PROPERTY OWNERS'  
IMPROVEMENT DISTRICTS.****Actions.**Priority of cases under provisions,  
§14-94-114.**Assessments.**

Benefits and damages, §14-94-115.

Filing, §14-94-116.

Hearing, §14-94-116.

Interest on assessment, §14-94-119.

Levy of tax, §14-94-118.

Subsequent levies, §14-94-121.

Notice, §14-94-116.

Reassessments, §14-94-117.

**Board of commissioners.**

Chairman, §14-94-107.

Damages.

Liability of members for damages,  
§14-94-107.

Removal of members.

Liability for damages.

Corrupt intent required,  
§14-94-108.Debt to finance improvements,  
§14-94-123.

Definition of board, §14-94-103.

Employees, §14-94-107.

Liability for damages.

Members of board, §14-94-107.

Removal of members.

Corrupt intent required,  
§14-94-108.

Oaths, §14-94-107.

Planning by board, §14-94-109.

Powers.

Generally, §14-94-107.

Removal of members.

Procedure, §14-94-108.

Rules and regulations.

Powers as to, §14-94-107.

Secretary, §14-94-107.

Vacancies.

Selection of successor, §14-94-107.

**Bond issues.**

Financing improvements, §14-94-123.

Payment of bonds and interest,  
§14-94-125.

Source of payment, §14-94-125.

Tax exemption, §14-94-124.

Terms and conditions, §14-94-123.

**Citation of provisions, §14-94-101.****Clerk.**

Defined, §14-94-103.

**Construction and interpretation,  
§14-94-104.**

## **MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICTS**

—Cont'd

**Continued existence of district,**  
§14-94-128.

**Corporate nature of entity,**  
§14-94-111.

### **Damages.**

Board of commissioners.

Liability of members, §14-94-107.

Removal of members.

Liability for damages.

Corrupt intent required,  
§14-94-108.

**Definitions,** §14-94-103.

**Dissolution,** §14-94-126.

### **Districts.**

Defined, §14-94-103.

### **Eminent domain.**

Powers of district, §14-94-112.

Sale of land acquired under provisions,  
§14-94-113.

### **Employees of districts.**

Powers of districts as to, §14-94-110.

### **Facilities.**

Defined, §14-94-103.

### **Formation of district.**

Actions.

Priority of cases, §14-94-114.

Continued existence of district,  
§14-94-128.

Petitions.

Governing bodies.

Duties as to, §14-94-105.

Hearing on petition and  
determination, §14-94-106.

Lands lying in more than one  
municipality, §14-94-105.

### **Gifts.**

Powers to accept, §14-94-110.

### **Governing bodies.**

Defined, §14-94-103.

Petition to form district.

Duties as to, §14-94-105.

### **Hearings.**

Assessments, §14-94-116.

Board of commissioners.

Removal of board members,  
§14-94-108.

Petitions to form district, §14-94-106.

### **Improvements.**

Defined, §14-94-103.

### **Interest.**

Assessments.

Interest on assessment, §14-94-119.

Bond issues.

Payment of bonds and interest,  
§14-94-125.

## **MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICTS**

—Cont'd

### **Leases.**

Power to sell or lease improvements,  
§14-94-110.

**Legislative intent,** §14-94-102.

### **Liability.**

Board of commissioners.

Members of board, §14-94-107.

Removal of members.

Liability for damages.

Corrupt intent required,  
§14-94-108.

### **Liens.**

Foreclosure.

Action to foreclose.

Priority of cases, §14-94-114.

Preliminary expenses of  
improvements, §14-94-127.

### **Municipalities.**

Defined, §14-94-103.

Nearby municipalities.

Defined, §14-94-103.

### **Nearby municipalities.**

Defined, §14-94-103.

### **Notes.**

Financing improvements, §14-94-123.

### **Notice.**

Assessments, §14-94-116.

### **Oaths.**

Board of commissioners, §14-94-107.

### **Penalties.**

Taxation.

Payment of taxes.

Delinquency, §14-94-122.

### **Person.**

Defined, §14-94-103.

### **Petitions.**

Board of commissioners.

Removal of board members,  
§14-94-108.

Formation of district, §14-94-105.

Hearing and determination,  
§14-94-106.

Lands lying in more than one  
municipality, §14-94-105.

### **Planning.**

Board of commissioners, §14-94-109.

### **Powers of district.**

Corporate powers, §14-94-111.

Eminent domain, §14-94-112.

Generally, §14-94-110.

### **Preliminary expenses of improvements.**

Lien for preliminary expenses,  
§14-94-127.

### **Purpose of provisions,** §14-94-102.



## **MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICTS**

—Cont'd

### **Real property.**

Assessment of benefits and damages to property within district as result of improvement, §14-94-115.

Definition of real property, §14-94-103.

Sale of land, §14-94-113.

Taxation.

Payment of taxes.

Delinquency, §14-94-122.

### **Reassessments, §14-94-117.**

### **Rules and regulations.**

Board of commissioners, §14-94-107.

### **Sales.**

Power to sell or lease improvements, §14-94-110.

Property acquired by districts, §14-94-113.

### **Short title of provisions, §14-94-101.**

### **Taxation.**

Bonds issued under chapter.

Exemptions from tax, §14-94-124.

Collection of taxes, §14-94-120.

Enforcement, §14-94-122.

Delinquency.

Penalty, §14-94-122.

Extension and collection, §14-94-120.

Foreclosure.

Actions to foreclose.

Priority of cases, §14-94-114.

Levy of tax, §14-94-118.

Subsequent levies, §14-94-121.

Payment of taxes.

Installment payments, §14-94-122.

Penalty to enforce, §14-94-122.

### **Title.**

Short title, §14-94-101.

## **N**

## **NAMES.**

**Municipal corporations, §14-54-101.**

## **NOTES.**

### **Municipal property owners' improvement districts.**

Financing improvements, §14-94-123.

## **NOTICE.**

### **Counties.**

Bond issues.

Indebtedness for courthouses and jails, §§14-72-302, 14-72-306.

### **Dogs.**

Municipal corporations.

Preventing dogs from running at large.

Destruction.

Notice required prior to destruction, §14-54-1102.

## **NOTICE —Cont'd**

### **Improvement districts.**

Assessments.

Delinquencies.

Sale of land, §§14-86-1401 to 14-86-1405.

See IMPROVEMENT DISTRICTS.

Construction, operation, repair and sale of improvements.

Continuance of district for purpose of making improvements and repairs.

Readjustment of assessment, §14-91-604.

Formation of districts, §§14-86-301 to 14-86-303.

See IMPROVEMENT DISTRICTS.

Municipal districts.

Annexation of territory to district, §14-88-503.

Assessments.

Correction of erroneous descriptions or omitted lands, §14-90-601.

Delinquencies.

Actions to enforce payment, §14-90-1003.

Unredeemed land, §14-90-911.

Filing of assessments, §14-90-402.

Form of notice for collection of assessment, §14-90-903.

In rem proceedings to foreclose lien, §14-90-1408.

Revision of assessments, §14-90-602.

Construction, operation, repair and sale of improvements.

Utility companies to be notified before paving of street, §14-91-103.

Waterworks, electric plants and sewers.

Sale of waterworks when waterworks and sewer system constructed by same district, §§14-91-1001, 14-91-1002.

Notice required on every petition for establishment, §14-86-201.

Unlawful to circulate petition without required notice, §14-86-201.

## **Livestock.**

Municipal corporations.

Impoundment, §14-54-1101.

**NOTICE —Cont'd****Livestock —Cont'd**

Running at large.

Impoundment of animals running at large.

Municipal corporations,  
§14-54-1101.

**Municipal property owners' improvement districts.**

Assessments, §14-94-116.

**Property owner's improvement district.**

Annexation of lands outside district boundaries, §14-93-133.

Assessments.

Publication, §14-93-117.

Taxation.

Publication, §14-93-119.

**Urban service districts.**

Establishment of districts, §14-95-201.

**NUISANCES.****Municipal corporations.**

Penalties.

Zoning.

Continued use in disregard of setback line, §14-56-304.

Zoning.

Continued use in disregard of setback line, §14-56-304.

Penalties, §14-56-304.

**Penalties.**

Municipal corporations.

Zoning.

Continued use in disregard of setback line, §14-56-304.

**NURSES.****Education.**

Training schools.

Authority of cities of the first class to establish, §14-54-801.

**Municipal corporations.**

Training schools.

Authority of cities of the first class to establish, §14-54-801.

**O****OATHS.****Improvement districts.**

Municipal districts.

Assessments.

Board of assessments.

Oath of office, §14-90-202.

Assessors, §14-88-407.

Board of improvements.

Oath of office, §14-88-302.

Treasurer, §14-88-404.

**OATHS —Cont'd****Municipal property owners' improvement districts.**

Board of commissioners, §14-94-107.

**Property owners' improvement districts.**

Assessor, §14-93-116.

Board members.

Oath of office, §14-93-107.

**OBSCENITY.****Municipal corporations.**

Punishment of lewd and lascivious behavior in public places.

Ordinances.

Duty to enact ordinances,  
§14-55-103.

**ORDINANCES.****Improvement districts.**

Municipal districts.

See IMPROVEMENT DISTRICTS.

**Local governments.**

Municipal corporations.

See MUNICIPAL CORPORATIONS.

**Milk and milk products.**

Municipal corporations.

Forms.

Regulating production, processing and sale of milk, §14-54-1202.

**Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**Urban service districts.**

Establishment of districts, §14-95-201.

Initiative and referendum.

Constitutional provisions to apply,  
§14-95-203.

Requirements, §14-95-202.

Modification or dissolution of district,  
§14-95-302.

**P****PARKING.****Municipal corporations.**

Parking meters, §§14-57-501 to  
14-57-610.

See MUNICIPAL CORPORATIONS.

**PARKING METERS.**

**Municipal corporations,** §§14-57-501 to 14-57-610.

See MUNICIPAL CORPORATIONS.

**PARKS AND RECREATION.****Eminent domain.**

Municipal corporations.

Cities and towns on state line.

Passage of condemnation ordinances, §14-54-106.

**PARKS AND RECREATION —Cont'd****Eminent domain —Cont'd**

Municipal corporations —Cont'd  
 Cities and towns on state line  
 —Cont'd

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise,  
 §14-54-106.

**Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**PARTIES.****Improvement districts.**

Municipal districts.

Assessments.

Delinquencies.

Actions to enforce payment,  
 §§14-90-1004, 14-90-1005.

**PARTITION.****Improvement districts.**

Partition of assessments among  
 several owners of tract,  
 §14-86-601.

**PENALTIES.****City courts.**

Fines paid into city or town treasury,  
 §14-55-608.

**Improvement districts.**

Audits.

Nonmunicipal districts.

Failure to appear or deliver  
 documents, §14-86-2003.

Counties with over 75,000 population.

Delinquent assessments.

Addition of penalty and costs to  
 tax, §14-86-1206.

Failure of collector to certify  
 delinquent list, §14-86-1203.

Depositories.

Bonds, surety.

Failure to require bond,  
 §14-86-1801.

Destruction of section corners,  
 §14-86-502.

Municipal districts.

Annual financial settlements.

Failure to file, §14-89-1101.

Assessments.

Collection of assessments,  
 §14-90-901.

Delinquencies, §14-90-1403.

Bond issues.

Improper use of proceeds,  
 §14-89-201.

City improvement collectors.

Failure of former collecting officers  
 to turn over books to  
 improvement collector,  
 §14-88-405.

**PENALTIES —Cont'd****Improvement districts —Cont'd**

Municipal districts —Cont'd

Misuse of funds, §14-88-401.

Reports.

Annual financial reports,  
 §14-89-1401.

Suburban improvement districts.

Bond issues.

Improper use of funds, §14-92-203.

Taxation.

Delinquencies.

Apportioned assessment.

Relief from penalties,  
 §14-86-1003.

Remission of delinquent penalties,  
 §14-86-1002.

**Livestock.**

Municipal corporations.

Driving stock into city.

Unlawful for city employee,  
 §14-54-1101.

**Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**Municipal property owners'  
improvement districts.**

Taxation.

Payment of taxes.

Delinquency, §14-94-122.

**Nuisances.**

Municipal corporations.

Zoning.

Continued use in disregard of  
 setback line, §14-56-304.

**Police courts.**

Fines paid into city or town treasury,  
 §14-55-608.

**PERMITS.****Municipal corporations.**

Buildings.

Construction permits, §14-56-202.

Taxicabs, §§14-57-304 to 14-57-308.

**PERSONAL PROPERTY.****Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**PETITIONS.****Improvement districts.**

See IMPROVEMENT DISTRICTS.

**Municipal property owners'  
improvement districts.**

Board of commissioners.

Removal of board members,  
 §14-94-108.

Formation of district, §14-94-105.

Hearing and determination,  
 §14-94-106.



**PETITIONS —Cont'd****Urban service districts.**

Establishment of districts, §14-95-201.

**PLANNING.****Improvement districts.**

Suburban improvement districts.

See IMPROVEMENT DISTRICTS.

**Municipal corporations, §§14-56-101 to 14-56-509.**

See MUNICIPAL CORPORATIONS.

**Municipal property owners' improvement districts.**

Board of commissioners, §14-94-109.

**Property owners' improvement districts.**

Board, §14-93-109.

**POLICE COURTS.****Penalties.**

Fines paid into city or town treasury, §14-55-608.

**POLLUTION.****Municipal corporations.**

Water pollution.

Grants and bonds for control facilities.

Revenue bonds for repayment, §14-72-101.

**POOLROOMS.****Licenses.**

Municipal corporations.

Power to license, §14-54-1401.

**Municipal corporations.**

Licenses.

Power to license, §14-54-1401.

Power to license, regulate, tax, prohibit or suppress, §14-54-1401.

Taxation.

Power to tax, §14-54-1401.

**Taxation.**

Municipal corporations.

Power to tax, §14-54-1401.

**PRISON TERMS.****Municipal improvement district board members.**

Interest in contracts, §14-88-309.

Interest in loans, §14-88-310.

Misuse of funding or refunding bond proceeds, §14-89-201.

**Municipal improvement district subordinate officers.**

Misuse of funding or refunding bond proceeds, §14-89-201.

Misuse of funds and unlawful actions generally, §§14-88-401, 14-88-402.

**PRISON TERMS —Cont'd****Suburban improvement district board officers, members or agents.**

Misuse of bond proceeds, §14-92-203.

**PROPERTY OWNERS'****IMPROVEMENT DISTRICTS.****Actions.**

Power to sue and be sued, §14-93-112.

**Actions expedited, §14-93-115.****Annexation.**

Hearings, §14-93-133.

Lands outside boundaries of district may be annexed, §14-93-133.

Notice, §14-93-133.

Petitions, §14-93-133.

Purposes, §14-93-133.

**Appeals.**

Creation of district, §14-93-106.

**Assessments, §14-93-116.**

Additional levies, §14-93-129.

Assessor, §14-93-116.

Appointment, §14-93-116.

Duties, §14-93-116.

Oath of office, §14-93-116.

Filing, §14-93-117.

Hearings.

Board of equalization, §14-93-117.

Interest, §14-93-120.

Notice.

Publications, §14-93-117.

Reassessment, §14-93-118.

Services turned over to municipality.

Tax on assessment of benefits, §14-93-130.

**Board.**

Defined, §14-93-103.

Dissolution of district, §14-93-127.

Liability of members, §14-93-107.

Oath of office, §14-93-107.

Petition to form district.

Names of commissioners, §14-93-105.

Planning, §14-93-109.

Powers, §14-93-107.

Removal of members.

Petition, §14-93-108.

**Bond issues, §14-93-124.**

Failure to pay.

Appointment of receiver, §14-93-126.

Security, §14-93-126.

Services turned over to municipality.

Revenue bonds, §14-93-130.

Tax exemption, §14-93-125.

**Boundaries.**

Annexation of lands outside district boundaries, §14-93-133.

## **PROPERTY OWNERS' IMPROVEMENT DISTRICTS**

—Cont'd

### **Citation of law.**

Short title, §14-93-101.

### **Connections by persons outside boundaries of district, §14-93-132.**

### **Consolidation.**

Contracts for consolidation of districts, §14-93-131.

Funding of consolidated systems, §14-93-131.

### **Construction of act, §14-93-104.**

### **Continued existence of district, §14-93-129.**

### **Contracts.**

Consolidation of districts, §14-93-131.

### **Creation.**

Appeal, §14-93-106.

Judgment, §14-93-106.

Petitions, §14-93-105.

Hearing on petition, §14-93-106.

Purposes, §14-93-110.

### **Definitions, §14-93-103.**

### **Dissolution, §14-93-127.**

### **Eminent domain.**

Powers, §14-93-113.

Purposes of exercise of eminent domain, §14-93-113.

### **Gifts.**

Acceptance of gifts, §14-93-111.

### **Hearings.**

Annexation of lands outside boundaries of district, §14-93-133.

### **Assessments.**

Board of equalization, §14-93-117.

### **Creation of district.**

Hearing on petition, §14-93-106.

### **Interest.**

Assessment, §14-93-120.

### **Land.**

Sale of land, §14-93-114.

### **Legislative intent, §14-93-102.**

### **Liens.**

Preliminary expenses, §14-93-128.

Taxation, §14-93-119.

### **Municipal corporations.**

Services turned over to municipality, §14-93-130.

### **Notice.**

Annexation of lands outside district boundaries, §14-93-133.

### **Assessment.**

Publication, §14-93-117.

Taxation, §14-93-119.

### **Oaths.**

Assessor, §14-93-116.

## **PROPERTY OWNERS' IMPROVEMENT DISTRICTS**

—Cont'd

### **Oaths —Cont'd**

Board members.

Oath of office, §14-93-107.

### **Petitions.**

Annexation of lands outside district boundaries, §14-93-133.

Creation, §14-93-105.

Hearing on petition, §14-93-106.

Removal of board members, §14-93-108.

### **Planning.**

Board, §14-93-109.

### **Powers, §§14-93-111, 14-93-112.**

### **Preliminary expenses.**

Lien, §14-93-128.

### **Purpose of provisions, §14-93-102.**

### **Purposes for which district organized, §14-93-110.**

### **Sale of land, §14-93-114.**

### **Seals and sealed instruments.**

Corporate seal, §14-93-112.

### **Short title of law, §14-93-101.**

### **Taxation.**

Bond issues.

Exemption, §14-93-125.

Collection, §14-93-121.

Enforcement, §14-93-123.

### **Collector.**

Commission, §14-93-121.

Contest, §14-93-119.

### **Delinquency.**

Penalty, §14-93-123.

Extension of levy, §14-93-121.

Levy, §14-93-119.

Subsequent levies, §14-93-122.

Lien, §14-93-119.

### **Notice.**

Publication, §14-93-119.

### **Payment.**

Delinquency.

Penalty, §14-93-123.

Installment, §14-93-123.

Not prerequisite to payment of general taxes, §14-93-121.

Services turned over to municipality.

Tax on assessment of benefits, §14-93-130.

Subsequent levies, §14-93-122.

### **Title of law, §14-93-101.**

## **PROSTITUTION.**

### **Houses of prostitution.**

General powers of cities and towns, §14-54-103.

### **Municipal corporations.**

Powers of cities to punish prostitutes, §14-54-1408.

**PUBLICATION.****Improvement districts.**

Municipal districts.

Assessments.

Delinquencies.

Action to enforce payment,

§14-90-1003.

**Municipal corporations.**

Accounts and accounting.

Financial statements, §14-59-116.

By posting, §14-59-116.

Bond issues.

Refund of amendment 13 municipal  
bond proceeds.

Publication of notice, §14-72-703.

Ordinances, §14-55-206.

**PUBLIC UTILITIES.****Improvement districts.**

Municipal districts generally.

See IMPROVEMENT DISTRICTS.

**Municipal corporations.**

Generally.

See MUNICIPAL CORPORATIONS.

**PURCHASING.****Bids.**

Municipal corporations, §14-58-303.

**Municipal corporations.**

Bids, §14-58-303.

Sale or exchange of supplies, materials  
or equipment, §14-58-306.**R****RAILROADS.****Improvement districts.**

Municipal districts.

Assessments.

Property subject to assessment,  
§14-90-302.**RATES AND CHARGES.****Improvement districts.**

Municipal districts.

Operation of water and electric light  
plants in certain cities pending  
retirement of bonds, §14-91-401.

Suburban improvement districts.

Joint operation of contiguous  
districts.Schedule of rates fixed by  
commissioners, §14-92-307.**Municipal corporations.**

Public utilities.

Regulation of rates, §14-54-704.

**RATES AND CHARGES —Cont'd****Municipal corporations —Cont'd**

Taxicabs, §14-57-303.

Exclusive powers to regulate rates,  
§14-57-302.**REAL PROPERTY.****Improvement districts.**

Mobile or manufactured home

permanently affixed to foundation.

Deemed real property, §14-86-102.

Taxation.

Delinquencies.

See IMPROVEMENT DISTRICTS.

**Municipal corporations.**

General provisions.

See MUNICIPAL CORPORATIONS.

**Municipal property owners'  
improvement districts.**Assessment of benefits and damages to  
property within district as result  
of improvement, §14-94-115.

Definition of real property, §14-94-103.

Sale of land, §14-94-113.

Taxation.

Payment of taxes.

Delinquency, §14-94-122.

**RECEIVERS.****Improvement districts.**

Tax sales.

Redemption of land from state,  
§14-86-1602.**Municipal corporations.**

Parking meters.

Bond issues secured by parking  
meter funds.Default in payment of bonds,  
§14-57-609.**RECORDATION.****Improvement districts.**

Assessments.

Delinquencies.

Counties of more than 150,000  
population.Fee for recording delinquent list  
abolished, §14-86-1304.

Consolidation.

Liens recorded where land located,  
§14-87-104.Requirement of recordation in each  
county where district located in  
more than one county,  
§14-87-104.



**RECORDATION —Cont'd****Improvement districts —Cont'd****Municipal districts.****Assessments.**

In rem proceedings to foreclose lien.

Delinquent list and redemptions recorded, §14-90-1404.

Construction, operation, repair and sale of improvements.

Waterworks, electric plants and sewers.

Connection of sewers to lands outside districts, §14-91-903.

**RECORDS.****Improvement districts.****Winding up affairs.**

Turning over records to city, §14-88-603.

**Municipal corporations.****Accounts and accounting.**

Fixed asset records, §14-59-107.

Maintenance of and destruction of accounting records, §14-59-114.

**REFUNDING BONDS.****Improvement districts.****Consolidation.**

See IMPROVEMENT DISTRICTS.

**REPORTS.****Budgets.****Municipal corporations.**

Annual financial reports submitted by mayor, §14-58-302.

**Improvement districts.****Audits.**

Nonmunicipal districts, §14-86-2004.

**Municipal districts.****Annual financial reports.****Failure to file.**

Removal of board members, §14-89-1403.

Penalties for violation, §14-89-1401.

Required, §14-89-1402.

Operation of water and electric light plants in certain cities pending retirement of bonds, §14-91-401.

**Winding up affairs.**

Final report, §14-88-603.

**RIGHTS OF WAY.****Improvement districts.****Municipal districts.**

Construction, operation, repair and sale of improvements.

Levee or flood control districts, §14-91-308.

**RIOTS.****Municipal corporations.****Suppressing riots.****Ordinances.**

Duty to enact ordinances, §14-55-103.

**RULES AND REGULATIONS.****Municipal corporations.****Planning.**

See MUNICIPAL CORPORATIONS.

**Municipal property owners' improvement districts.**

Board of commissioners, §14-94-107.

**RUNNING AT LARGE.****Municipal corporations.**

Prevention, §14-54-1101.

**S****SALES.****Improvement districts.****Municipal districts.**

Construction, operation, repair and sale of improvements, §§14-91-101 to 14-91-1106.

See IMPROVEMENT DISTRICTS.

**Milk and milk products.****Municipal corporations.****Regulation of sale of milk,**

§§14-54-1201, 14-54-1202.

**Municipal corporations.**

Authority to sell real or personal property, §14-54-302.

**Parking meters.**

Bond issues secured by parking meter funds, §14-57-606.

**Purchases and supplies.**

Sale or exchange of materials, supplies or equipment, §14-58-306.

**Municipal property owners' improvement districts.**

Power to sell or lease improvements, §14-94-110.

Property acquired by districts, §14-94-113.

**SANITATION.****Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**SEALS AND SEALED INSTRUMENTS.****Property owners' improvement districts.**

Corporate seal, §14-93-112.

**SECTION OR QUARTER SECTION CORNERS.****Removing or destroying.**

Improvement districts.

Destruction of section corners.

See IMPROVEMENT DISTRICTS.

**SERVICE OF PROCESS.****Constructive service.**

Warning order filed with papers.

Municipal improvement districts.

In rem proceedings to foreclose  
assessment lien, §14-90-1408.

Levee and flood control districts.

Eminent domain, §14-91-309.

**SEWERS.****Improvement districts.**

Municipal districts.

Bond issues.

Profits from electric plant,  
waterworks or sewer system  
to be used for payment,  
§§14-89-901 to 14-89-908.

See IMPROVEMENT  
DISTRICTS.

Construction, operation, repair and  
sale of improvements.

See IMPROVEMENT DISTRICTS.

**SHOPPING CENTERS.****Municipal corporations.**

Control of areas adjacent to shopping  
centers, §§14-54-501 to 14-54-505.

See MUNICIPAL CORPORATIONS.

**STATE DEPARTMENTS AND AGENCIES.****Improvement districts.**

Assessments.

Payment of assessments,  
§14-86-603.

Exemptions, §14-86-604.

Retroactivity, §14-86-605.

Sale or transfer of land,  
§14-86-606.

Excluded from newly formed districts.

Option of state agency or  
commission, §14-86-607.

**STATE OF ARKANSAS.****Municipal corporations.**

Joint services agreements.

Municipalities separated by state  
line.

Liability of state, §14-54-208.

Municipality liable for damages to  
state, §14-54-208.

**STATUTE OF LIMITATIONS.****Improvement districts.**

Counties with over 75,000 population.

Delinquent assessments.

Action for collection of tax,  
§14-86-1208.

Municipal districts.

Assessments.

In rem proceedings to foreclose  
lien.

Redemption, §14-90-1301.

Taxation.

Delinquencies.

Lists of delinquent realty.

Suit for collection of taxes,  
§14-86-1106.

**Municipal corporations.**

Ordinances.

Suits for recovery of fines by cities  
and towns, §14-55-605.

**STREETS.****Eminent domain.**

Municipal corporations.

Cities and towns on state line.

Passage of condemnation  
ordinance, §14-54-106.

Powers, §14-54-106.

Right of eminent domain.

Procedure for exercise,  
§14-54-106.

**Improvement districts.**

Municipal districts, §§14-89-1201 to  
14-89-1203.

See IMPROVEMENT DISTRICTS.

Suburban improvement districts.

See IMPROVEMENT DISTRICTS.

**SUBROGATION.****Improvement districts.**

Consolidation.

Overdue taxes of subsidiary district,  
§14-87-110.

**SUBURBAN IMPROVEMENT DISTRICTS, §§14-92-101 to 14-92-603.**

14-92-603.

See IMPROVEMENT DISTRICTS.

**SUNDAY.****Municipal corporations.**

Operation of businesses on Sunday.

Authority to regulate, §14-54-1402.

Motion picture show laws  
unaffected, §14-54-1402.

**T****TAXATION.****Billiard halls.**

Municipal corporations.

Power to tax, §14-54-1401.

**TAXATION —Cont'd****Bowling alleys.**

Municipal corporations.

Power to tax, §14-54-1401.

**Collection of taxes.**

Improvement districts.

General provisions.

See IMPROVEMENT DISTRICTS.

**Motorcycles.**

Municipal corporations.

Wheeled vehicles, §14-57-104.

**Municipal property owners' improvement districts.**

Bonds issued under chapter.

Exemptions from tax, §14-94-124.

Collection of taxes, §14-94-120.

Enforcement, §14-94-122.

Delinquency.

Penalty, §14-94-122.

Extension and collection, §14-94-120.

Foreclosure.

Actions to foreclose.

Priority of cases, §14-94-114.

Levy of tax, §14-94-118.

Subsequent levies, §14-94-121.

Payment of taxes.

Installment payments, §14-94-122.

Penalty to enforce, §14-94-122.

**Pool rooms.**

Municipal corporations.

Power to tax, §14-54-1401.

**Property owners' improvement districts.**

See PROPERTY OWNERS' IMPROVEMENT DISTRICTS.

**Schools.**

Improvement districts.

Municipal districts.

Water and electric light improvement districts.

School district tax, §§14-89-601 to 14-89-603.

**TAXICABS.****Minors.**

Municipal corporations.

Unlawful operation of taxicabs generally, §§14-57-401 to 14-57-404.

See MUNICIPAL CORPORATIONS.

**Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**TIRES.**

Width, §14-57-103.

**TORTS.****Municipal corporations.**

Shopping centers.

Control of areas adjacent to shopping centers.

Tort liability unaffected, §14-54-505.

**TRANSIENT VENDORS.****Municipal corporations.**

Power to regulate, §14-54-1407.

**U****UNITED STATES.****Contracts.**

Grants.

Municipal corporations.

Contracts for federal grants or assistance, §14-54-108.

**Municipal corporations.**

Federal grants.

Acceptance, §14-54-108.

Contracts for, §14-54-108.

**URBAN SERVICE DISTRICTS,**

§§14-95-101 to 14-95-610.

**Administration,** §14-95-401.**Area served,** §14-95-103.**Authorized,** §§14-95-102, 14-95-105.**Bond issues.**

Development finance authority,

§§14-95-601 to 14-95-610. See within this heading, "Development finance authority."

**Budgets,** §14-95-401.**Capital construction and improvements program,**

§§14-95-501, 14-95-502.

Creation, §14-95-501.

Financing, §14-95-502.

**Combination,** §§14-95-302, 14-95-303.

Voter approval, §14-95-304.

**Development finance authority.**

Bond issues, §§14-95-602, 14-95-603, 14-95-610.

Authorizing resolution and trust indenture, §14-95-602.

Effect, §14-95-609.

Bond fund, §14-95-605.

Deposit of proceeds, §14-95-606.

Refunding bonds, §14-95-603.

Security for bonds, §14-95-607.

Pledge of revenues, §§14-95-601, 14-95-608.

Restrictions, §14-95-604.

Security for bonds, §14-95-607.

**Dissolution,** §§14-95-302, 14-95-303.

Voter approval, §14-95-304.

When prohibited, §14-95-301.



**URBAN SERVICE DISTRICTS**

—Cont'd

**Establishment.**

Authorized, §§14-95-102, 14-95-105.

Ordinance, §14-95-201.

Initiative and referendum.

Constitutional provisions to apply,  
§14-95-203.

Requirements, §14-95-202.

Procedure, §14-95-201.

**Functions, §14-95-104.****Initiative and referendum.**Dissolution or modification of district,  
§14-95-304.

Establishment of district.

Applicability of constitutional  
provisions to ordinances,  
§14-95-203.**Joint service districts.**

Creation, §14-95-103.

**Legislative intent, §14-95-101.****Modification, §14-95-302.**

Voter approval, §14-95-304.

When prohibited, §14-95-301.

**Notice.**

Establishment of districts, §14-95-201.

**Ordinances.**

Establishment of districts, §14-95-201.

Initiative and referendum.

Constitutional provisions to apply,  
§14-95-203.

Requirements, §14-95-202.

Modification or dissolution of district,  
§14-95-302.**Petitions.**

Establishment of districts, §14-95-201.

**Purposes, §14-95-104.****Service charges, §§14-95-105,  
14-95-402, 14-95-403.**

Billing, §14-95-403.

Capital construction and  
improvements program.Pledge of service charges to finance,  
§14-95-502.

Levy, §14-95-402.

**V****VAGRANTS.****Municipal corporations.**Powers of cities to punish,  
§14-54-1408.**W****WAIVER.****Improvement districts.**

Municipal districts.

Assessments.

Redemption.

Waiver of right of redemption,  
§14-90-1302.**WARNING ORDERS.****Constructive service.**

Municipal improvement districts.

In rem proceedings to foreclose  
assessment lien, §14-90-1408.

Levee and flood control districts.

Eminent domain.

Foreign landowners, §14-91-309.

**WARRANTS FOR THE PAYMENT OF  
MONEY.****Improvement districts.**

See IMPROVEMENT DISTRICTS.

**Municipal corporations.**

See MUNICIPAL CORPORATIONS.

**WATER IMPROVEMENT  
DISTRICTS.****Refund of excess collections by****municipal districts, §§14-89-1201  
to 14-89-1203.**

Authority of districts, §14-89-1202.

Definition of "property owner,"  
§14-89-1201.Delinquent realty not counted,  
§14-89-1203.**WATER SUPPLY AND  
WATERWORKS.****Improvement districts.**

Municipal districts.

Bond issues.

Profits from electric plant,  
waterworks or sewer system  
to be used for payment,  
§§14-89-901 to 14-89-908.See IMPROVEMENT  
DISTRICTS.Construction, operation, repair and  
sale of improvements.Waterworks, electric plants and  
sewers.See IMPROVEMENT  
DISTRICTS.

Mortgage of water and light plants.

Authority of district, §14-89-202.

Operation of waterworks, gas or  
electric lights by council,  
§14-91-402.Water and electric light  
improvement districts.School district tax, §§14-89-601 to  
14-89-603.See IMPROVEMENT  
DISTRICTS.

Suburban improvement districts.

Municipality of 25,000.

Water and sewer services,  
§§14-92-501, 14-92-502.See IMPROVEMENT  
DISTRICTS.

**WATER SUPPLY AND****WATERWORKS —Cont'd****Improvement districts —Cont'd**

Water and electric light plants.

Municipal districts.

Operation in certain cities pending  
retirement of bonds,  
§14-91-401.

**WEEDS.****Municipal corporations.**

Sanitation.

Clearance of unsightly and  
unsanitary conditions of real  
property, §§14-54-901 to  
14-54-904.

See MUNICIPAL  
CORPORATIONS.

**Sanitation.**

Municipal corporations.

Clearance of unsightly and  
unsanitary conditions of real  
property, §§14-54-901 to  
14-54-904.

See MUNICIPAL  
CORPORATIONS.

**WORKERS' COMPENSATION.**

**Municipal corporations,** §§14-60-101  
to 14-60-106.

See MUNICIPAL CORPORATIONS.

**Municipalities.**

Employee coverage required,  
§14-60-101.

**Y****YEAR.****Counties.**

Fiscal year, §14-71-101.

**Fiscal year.**

Counties, §14-71-101.

Municipal corporations, §14-71-102.

**Municipal corporations.**

Fiscal year, §14-71-102.

**Z****ZONING.****Municipal corporations.**

See MUNICIPAL CORPORATIONS.

























